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Presidential Documents

Title 3—

The President

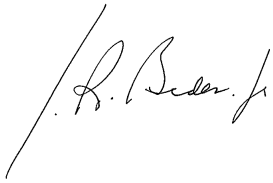
Presidential Determination No. 2023–04 of February 24, 2023

Unexpected Urgent Refugee and Migration Needs

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 2(c)(1) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601(c)(1) (MRAA), I hereby determine, pursuant to section 2(c)(1) of the MRAA, that it is important to the national interest to furnish assistance under the MRAA in an amount not to exceed $50 million from the United States Emergency Refugee and Migration Assistance Fund for the purpose of meeting unexpected urgent refugee and migration needs resulting from the February 2023 earthquakes in Turkey and Syria, including through contributions and other assistance to international and nongovernmental organizations to provide humanitarian assistance for refugees and internally displaced persons affected by the earthquakes, including their host communities, and through payment of administrative expenses of the Bureau of Population, Refugees, and Migration of the Department of State.

You are authorized and directed to submit this determination to the Congress, along with the accompanying Justification, and to publish this determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, February 24, 2023

[FR Doc. 2023–05218
Filed 3–10–23; 8:45 am]
Billing code 4710–10–P

Presidential Documents

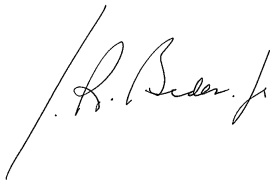
Memorandum of March 3, 2023

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $400 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, March 3, 2023

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Rules and Regulations

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

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–2022–1300; Project Identifier MCAI–2022–00663–T; Amendment 39–22318; AD 2023–02–11]

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 certain Airbus SAS Model A321–251NX, A321–252NX, A321–253NX, A321–271NX and A321–272NX airplanes. This AD was prompted by an emergency exit slide deployment test on an Airbus Cabin Flex (ACF) overwing emergency exit, the emergency exit slide did not deploy due to disconnected slide release cable junction. This AD requires a one-time detailed inspection of the installation of the ACF overwing emergency exit slide release mechanism for discrepancies, and applicable corrective actions, 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 April 17, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 17, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1300; 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–2022–1300.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *Vladimir.Ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A321–251NX, A321–252NX, A321–253NX, A321–271NX and A321–272NX airplanes. The NPRM published in the **Federal Register** on October 21, 2022 (87 FR 63968). The NPRM was prompted by AD 2022–0090, dated May 18, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0090) (also referred to as the MCAI). The MCAI states that during an emergency exit slide deployment test on an Airbus SAS Model A321neo ACF overwing emergency exit, the emergency exit slide did not deploy. The investigation identified that the slide release mechanism cable junction was disconnected inside the surrounding collets and knurled sleeve nut. The mushroom head connector was not inserted into the T-slot cable joint. This condition, if not corrected, could prevent emergency slide deployment, possibly resulting in injury to occupants during an emergency evacuation.

In the NPRM, the FAA proposed to require a one-time detailed inspection of the installation of the ACF overwing emergency exit slide release mechanism for discrepancies, and applicable corrective actions, as specified in EASA AD 2022–0090. 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–2022–1300.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Air Line Pilots Association, International (ALPA), which supported the NPRM without change.

The FAA received additional comments from American Airlines (AA). The following presents the comments received on the NPRM and the FAA's responses to each comment.

Request To Revise Compliance Time

AA requested to double the compliance time for the inspection to 8 months to allow AA to schedule roughly one A321NX aircraft per week during the compliance period. AA stated that no findings have been made on the four A321NX airplanes it has inspected. AA added that, in practice, configuration 2, inspection method 2 takes longer than the 14 man-hours specified in the associated Airbus Alert Operators Transmission (AOT), due to removal of the overhead stowage compartments (OHSCs). AA further noted that removal of the OHSCs to accomplish the inspection and corrective actions within the limited timeframe presents an undue burden on operations, since the OHSC removal is not a normal maintenance activity.

The FAA does not agree to change the compliance time because the commenter did not provide adequate justification for extension of the compliance time. Inspection of four airplanes with no findings does not ensure that unsafe condition is not present on other affected airplanes. Further, the FAA notes that the work-hours estimate was based on the data Airbus used when developing the required actions, and the commenter did not provide an alternative estimate

for the work-hours. EASA, as the State of Design Authority for these airplanes, performed a risk assessment and determined the compliance time was appropriate based on the safety implications of the identified unsafe condition, as well as the practical aspect of completing the required actions during regular maintenance periods. While removal of the OHSCs may not be a normal maintenance practice, in this case it is necessary to perform the inspections and address the identified unsafe condition. However, the FAA will consider requests for an alternative method of compliance (AMOC) as specified in paragraph (j)(1) of this AD if sufficient data are submitted to substantiate that the compliance time extension would provide an acceptable level of safety. The FAA has not changed this AD in response to this comment.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA 2022–0090 specifies procedures for a one-time detailed inspection of the installation of the ACF overwing emergency exit slide release mechanism on both left hand (LH) and right hand (RH) sides of the fuselage for discrepancies (*i.e.,* a disconnected slide release cable inside the sleeve nuts and collets (mushroom head not inserted in T-slot joint) and missing lockwire around the knurled sleeve nut), and applicable corrective actions. The corrective actions include connecting the slide release cable and installing lockwire on the knurled sleeve nut.

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 65 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
14 work-hours × $85 per hour = $1,190	$0 *	$1,190	$77,350

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

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
12 work-hours × $85 per hour = $1,020	Negligible	$1,020

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:

2023–02–11 Airbus SAS: Amendment 39–22318; Docket No. FAA–2022–1300; Project Identifier MCAI–2022–00663–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 17, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A321–251NX, A321–252NX, A321–253NX, A321–271NX and A321–272NX airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0090, dated May 18, 2022 (EASA AD 2022–0090).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an emergency exit slide deployment test on an Airbus Cabin Flex (ACF) overwing emergency exit, where the emergency exit slide did not deploy due to a disconnected slide release cable junction. The FAA is issuing this AD to address the disconnected slide release cable junction, which could prevent emergency slide deployment, possibly resulting in injury to occupants during an emergency evacuation.

(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, EASA AD 2022–0090.

(h) Exceptions to EASA AD 2022–0090

(1) Where EASA AD 2022–0090 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0090 does not apply to this AD.

(3) Where paragraph (2) of EASA AD 2022–0090 specifies compliance times for corrective actions, for this AD, perform those corrective actions at the applicable times specified in paragraphs (h)(3)(i) through (iii) of this AD.

(i) If missing lockwire around the knurled sleeve nut is found and the slide release cable inside the sleeve nuts and collets is connected (mushroom head inserted in T-slot joint): Install lockwire within 4 months after the effective date of this AD.

(ii) If a disconnected slide release cable inside the sleeve nuts and collets (mushroom head not inserted in T-slot joint) is found and lockwire around the knurled sleeve nut is not missing: Connect slide release cable before further flight.

(iii) If a disconnected slide release cable inside the sleeve nuts and collets (mushroom head not inserted in T-slot joint) is found and the lockwire around the knurled sleeve nut is missing: Connect slide release cable and install lockwire before further flight.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0090 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 referenced in EASA AD 2022–0090 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, 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 instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *Vladimir.Ulyanov@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0090, dated May 18, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0090, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on January 24, 2023.

Christina Underwood,

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

[FR Doc. 2023–04955 Filed 3–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1989

[Docket Number: OSHA–2020–0006]

RIN 1218–AD27

Procedures for the Handling of Retaliation Complaints Under the Taxpayer First Act (TFA)

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: On March 7, 2022, the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor (Department) issued an interim final rule (IFR) that provided procedures for the Department's processing of complaints under the employee protection (retaliation or whistleblower) provisions of Section 7623(d) of the Taxpayer First Act (TFA or Act). The IFR established procedures and time frames for the handling of retaliation complaints under

TFA, including procedures and time frames for employee complaints to OSHA, investigations by OSHA, appeals of OSHA determinations to an administrative law judge (ALJ) for a hearing de novo, hearings by ALJs, review of ALJ decisions by the Administrative Review Board (ARB) (acting on behalf of the Secretary of Labor) and judicial review of the Secretary's final decision. It also set forth the Department's interpretations of the TFA whistleblower provisions on certain matters. This final rule adopts the IFR with one technical change.

DATES: This final rule is effective on March 13, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Meghan Smith, Program Analyst, Directorate of Whistleblower Protection Programs, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693–2199 (this is not a toll-free number) or email: *OSHA.DWPP@dol.gov.* This **Federal Register** publication is available in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

The Taxpayer First Act (TFA or Act), Public Law 116–25, 133 Stat. 981, was enacted on July 1, 2019. Section 1405(b) of the Act, codified at 26 U.S.C. 7623(d) and referred to throughout the interim final rule and this final rule as the TFA ''anti-retaliation,'' ''employee protection,'' or ''whistleblower'' provision, prohibits retaliation by an employer, or any officer, employee, contractor, subcontractor, or agent of such employer against an employee in the terms and conditions of employment in reprisal for the employee having engaged in protected activity. Protected activity under the TFA includes any lawful act done by an employee to provide information, cause information to be provided, or otherwise assist in an investigation regarding underpayment of tax or conduct which the employee reasonably believes constitutes a violation of the internal revenue laws or any provision of Federal law relating to tax fraud. To be protected, the information or assistance must be provided to one of the persons or entities listed in the statute, which include the Internal Revenue Service (IRS), the Secretary of the Treasury, the Treasury Inspector General for Tax Administration, the Comptroller General of the United States, the Department of Justice, the United States Congress, a person with supervisory authority over the employee, or any other person working for the employer who has the authority to investigate, discover, or terminate misconduct. The Act also protects employees from retaliation in reprisal for any lawful act done to testify, participate in, or otherwise assist in any administrative or judicial action taken by the IRS relating to an alleged underpayment of tax or any violation of the internal revenue laws or any provision of Federal law relating to tax fraud. The interim final rules established procedures for the handling of retaliation complaints under the Act, which OSHA is finalizing with one technical correction in this final rule.

II. Interim Final Rule, Comments Received and OSHA's Response

On March 7, 2022, OSHA published in the **Federal Register** an IFR establishing procedures for the handling of whistleblower retaliation complaints under the TFA. 81 FR 13976. The IFR also requested public comments. The prescribed comment period closed on May 6, 2022. OSHA received two comments responsive to the IFR.

The first commenter, a private citizen, stated their opinion that the proposed regulation was ''totally outside the purview of OSHA and Safety and Health concerns,'' and that ''OSHA and other government agencies'' are ''unconstitutional.'' OSHA disagrees with this comment. The TFA rule is a procedural and interpretative rule that implements a statutory provision lawfully enacted by Congress in which Congress assigned to the Secretary of Labor the responsibility to receive and adjudicate TFA retaliation complaints. The Secretary of Labor in turn assigned to OSHA the responsibility to administer the whistleblower program with respect to TFA retaliation complaints. See Sec'y's Order No. 8–2020 (May 15, 2020), 85 FR 58,393, 2020 WL 5578580 (Sept. 18, 2020). In OSHA's experience, promulgating procedural and interpretative rules governing the more than twenty whistleblower protection statutes that OSHA administers aids the public in understanding the procedures applicable to whistleblower cases and the standards that will apply to adjudication of such cases. As such, OSHA is making no revisions to the TFA rule in response to this comment.

The second commenter, the United Brotherhood of Carpenters and Joiners of America, expressed support for the rule and recommended adding ''making referrals to immigration authorities'' in the list of prohibited conduct outlined in 29 CFR 1989.102(a). OSHA agrees with the commenter that referring a worker to immigration authorities in retaliation for the worker's complaint about the employer's tax law violation would violate the TFA anti-retaliation provision. OSHA has reaffirmed this view in recent public guidance regarding retaliation in violation of the whistleblower protection laws it administers. See, *e.g.,* OSHA Whistleblower Protection Program Fact Sheet (August 2022), available at *https://www.osha.gov/sites/default/files/publications/OSHA3638.pdf* (''Retaliation can involve several types of actions, such as . . . [r]eporting the employee to the police or immigration authorities''), Whistleblower Investigations Manual, p. 29 (April 29, 2022), available at *https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-03-011.pdf* (noting adverse action can include ''[r]eporting or threatening to report an employee to the police or immigration authorities''). However, because the list of prohibited conduct in 29 CFR 1989.102(a) is not exhaustive, OSHA believes that the language in the IFR is expansive enough to encompass retaliatory referrals to immigration authorities.

Additionally, OSHA has drafted the regulatory text of 29 CFR 1989.102 to be consistent with its rules governing other OSHA-enforced whistleblower statutes to the extent possible under the applicable statutory language. See, *e.g.,* 29 CFR 1987.102 (listing examples of retaliatory conduct prohibited under the FDA Food Safety Modernization Act whistleblower provision); 29 CFR 1980.102 (listing examples of retaliatory conduct prohibited under the Sarbanes-Oxley Act whistleblower provision). OSHA's rules implementing other whistleblower statutes do not include the suggested language and adding the language in this rule could lead to confusion regarding whether this conduct is prohibited under the other whistleblower-protection statutes. Accordingly, OSHA is making no revisions to the TFA rule in response to this comment.

III. Discussion of Change

This final rule corrects one section of the Code of Federal Regulations, 29 CFR 1989.110(a), to harmonize the final rule with 29 CFR part 26. Under that part, pro se litigants do not have to electronically file petitions with the ARB, or show ''good cause'' to file by mail or some other non-electronic method. Therefore, OSHA is revising 29 CFR 1989.110(a) to be consistent with 29 CFR part 26. Accordingly, this rule modifies the IFR published on March 7, 2022. In all other respects, this rule adopts as final, without change, the IFR published on March 7, 2022.

IV. Paperwork Reduction Act

This rule contains a reporting provision (filing a retaliation complaint, § 1989.103) which was previously reviewed as a statutory requirement of TFA and approved for use by the Office of Management and Budget (OMB), as part of the Information Collection Request (ICR) assigned OMB control number 1218–0236 under the provisions of the Paperwork Reduction Act of 1995 (PRA). See Public Law 104–13, 109 Stat. 163 (1995). A non-material change has been submitted to OMB to include the regulatory citation.

V. Administrative Procedure Act

The notice and comment rulemaking procedures of § 553 of the Administrative Procedure Act (APA) do not apply ''to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). This is a rule of agency procedure, practice, and interpretation within the meaning of that section. Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments was not required for this rulemaking. Although this is a procedural and interpretative rule not subject to the notice and comment procedures of the APA, OSHA provided persons interested in the IFR 60 days to submit comments and considered the two comments pertinent to the IFR that it received in deciding to finalize the procedures in the IFR.

Furthermore, because this rule is procedural and interpretative rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. OSHA also finds good cause to provide an immediate effective date for this final rule, which makes one technical change and otherwise simply finalizes without change the procedures that have been in place since publication of the IFR. It is in the public interest that the rule be effective immediately so that parties know with the certainty afforded by a final rule what procedures are applicable to pending cases.

VI. Executive Orders 12866, and 13563; Unfunded Mandates Reform Act of 1995; Executive Order 13132

The Office of Information and Regulatory Affairs has concluded that this rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866, reaffirmed by Executive Order 13563, because it is not likely to: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, 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 set forth in Executive Order 12866. Therefore, no economic impact analysis under § 6(a)(3)(C) of Executive Order 12866 has been prepared.

Also, because this rule is not significant under Executive Order 12866, and because no notice of proposed rulemaking has been published, no statement is required under section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532. In any event, this rulemaking is procedural and interpretative in nature and is thus not expected to have a significant economic impact. Finally, this rule does not have ''federalism implications.'' The rule does 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[,]'' and therefore, is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

The notice and comment rulemaking procedures of section 553 of the APA do not apply ''to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). Rules that are exempt from APA notice and comment requirements are also exempt from the Regulatory Flexibility Act (RFA). See Small Business Administration Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, at 9; also found at *https://www.sba.gov/advocacy/guide-government-agencies-how-comply-regulatory-flexibility-act.* This is a rule of agency procedure, practice, and interpretation within the meaning of 5 U.S.C. 553; and, therefore, the rule is exempt from both the notice and comment rulemaking procedures of the APA and the requirements under the RFA. Nonetheless, OSHA, in the IFR, provided interested persons 60 days to comment on the procedures applicable to retaliation complaints under TFA and considered the two comments pertinent to the IFR that it received in deciding to finalize the procedures in the IFR.

List of Subjects in 29 CFR Part 1989

Administrative practice and procedure, Employment, Taxation, Whistleblower.

Authority and Signature

This document was prepared under the direction and control of Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health.

Signed at Washington, DC, on February 27, 2023.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

For the reasons set forth in the preamble, the Department of Labor amends 29 CFR part 1989, which was published as an interim final rule at 87 FR 12575 on March 7, 2022, as follows:

PART 1989—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE TAXPAYER FIRST ACT (TFA)

■ 1. The authority citation for part 1989 continues to read as follows:

Authority: 26 U.S.C. 7623(d); Secretary of Labor's Order 08–2020 (May 15, 2020), 85 FR 58393 (September 18, 2020); Secretary of Labor's Order 01–2020 (Feb. 21, 2020), 85 FR 13024–01 (Mar. 6, 2020).

■ 2. Amend § 1989.110 by revising paragraph (a) to read as follows:

§ 1989.110 Decisions and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB, which has been delegated the authority to act for the Secretary and issue decisions under this part subject to the Secretary's discretionary review. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 30 days of the date of the decision of the ALJ. All petitions and documents submitted to the ARB must be filed in accordance with 29 CFR part 26. The date of the postmark, facsimile transmittal, or electronic transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery, or other means, the petition is considered filed upon receipt. The petition must be served on

all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. The petition for review must also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. OSHA and the Associate Solicitor for Fair Labor Standards may specify the means, including electronic means, for service of petitions for review on them under this section.

* * * * *

[FR Doc. 2023–05076 Filed 3–10–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0136]

Special Local Regulations; Seventh Coast Guard District, Blessing of the Fleet—St. Augustine

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the Blessing of the Fleet—St. Augustine on April 2, 2023, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Seventh Coast Guard District identifies the regulated area for this event in St. Augustine, FL. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations in 33 CFR 100.701, Table 1 to § 100.701, paragraph (c), Item 8, will be enforced from noon until 3 p.m., on April 2, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST1 Anthony Deangelo, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone 904–714–7631, email *Anthony.Deangelo@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.701, Table 1 to § 100.701, paragraph (c), Item 8, for the Blessing of the Fleet—St. Augustine regulated from noon until 3 p.m., on April 2, 2023. This action is being taken to provide for the safety of life on navigable waterways during the event. Our regulation for recurring marine events within the Seventh Coast Guard District, § 100.701, Table 1 to § 100.701, paragraph (c), Item 8, specifies the location of the regulated area for the Blessing of the Fleet—St. Augustine which encompasses portions of the Matanzas River at the St. Augustine Municipal Marina. During the enforcement periods, as reflected in in § 100.701, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers.

Dated: March 8, 2023.

J.D. Espino-Young,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 2023–05110 Filed 3–10–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Great Lakes St. Lawrence Seaway Development Corporation

33 CFR Part 402

RIN 2135–AA54

Tariff of Tolls

AGENCY: Great Lakes St. Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Great Lakes St. Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the GLS and the SLSMC. The GLS is revising its regulations to reflect the fees and charges levied by the SLSMC in Canada starting in the 2023 navigation season, which are effective only in Canada.

DATES: This rule is effective on March 22, 2023.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to *http://www.Regulations.gov;* or in person at the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carrie Mann Lavigne, Chief Counsel, Great Lakes St. Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662; (315) 764–3200.

SUPPLEMENTARY INFORMATION: The Great Lakes St. Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls (Schedule of Fees and Charges in Canada) in their respective jurisdictions.

The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the GLS and the SLSMC. The GLS is revising 33 CFR 402.12, ''Schedule of tolls'', to reflect the fees and charges levied by the SLSMC in Canada beginning in the 2023 navigation season.

Regulatory Notices: Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.Regulations.gov.*

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore, Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under

the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Great Lakes St. Lawrence Seaway Development Corporation amends 33 CFR part 402 as follows:

PART 402—TARIFF OF TOLLS

■ 1. The authority citation for part 402 continues to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4), and 988, as amended; 49 CFR 1.101.

Subpart A—Regulations

■ 2. Amend § 402.3 by:
■ a. Revising the definitions of ''Cargo'', ''Commodity'', and ''Containerized Cargo'';
■ b. Removing the definition of ''Duration;'' and
■ c. Revising the definitions of ''New business'' and ''Volume commitment''.

The revisions read as follows:

§ 402.3 Interpretation.

* * * * *

Cargo means all goods aboard a vessel whether carried as revenue or non-revenue freight or carried for the vessel owner, but does not include:

(1) Empty containers or the tare weight of loaded containers;

(2) Vessels' fuel, ballast or stores;

(3) The personal effects of crew or passengers; or

(4) In transit cargo that is carried both upbound and downbound in the course of the same voyage.

* * * * *

Commodity means cargo that has been defined as a commodity in the Manager's commodity codes.

Containerized cargo means cargo shipping in a container. Containers are used to transport freight in multiple modes: vessel, rail, and truck. There are many configurations: Dry, insulated or thermal, refrigerated or reefer, flat racks and platforms, open top and tank. Typical dimensions: 8 feet in width, 8 feet 6 inches or 9 feet 6 inches in height and 20 feet or 40 feet in length. Less common lengths include, for example, 24, 28, 44, 45, 46, 48, 53, and 56 feet.

* * * * *

New business means:

(1) Containerized cargo moved by vessel in the Seaway at any time in a navigation season;

(2) A commodity/origin/destination combination in which the commodity moved by vessel in the Seaway at any time in a navigation season:

(i) Originating at a point inside Canada or the United States of America or at a country outside Canada or the United States of America, provided that such commodity has not originated from such point or country, as the case may be, at any time in any of the five consecutive navigation seasons immediately preceding the then current navigation season;

(ii) Destined to a point inside Canada or the United States of America or a country outside Canada or the United States of America, provided that such commodity has not been destined to such point or country, as the case may be, at any time in any of the five consecutive navigation seasons immediately preceding the then current navigation season;

(iii) Originating at a point inside Canada or the United States of America or a country outside Canada or the United States of America and destined to a point inside Canada or the United States of America or a country outside Canada or the United States of America, provided that such Commodity was previously moved by any mode of transportation other than by vessel at all times in the five consecutive navigation seasons immediately preceding the then current navigation season; or

(iv) That has not moved through either section of the Seaway in any of the five consecutive navigation seasons immediately preceding the then current navigation season, in a volume exceeding 10,000 metric tons.

* * * * *

Volume commitment means the negotiated annual cargo tonnage, with a minimum of 75,000 metric tons per year, a shipper/receiver must reach for the negotiated toll reduction under the Gateway Incentive to become applicable.

* * * * *

■ 3. Amend § 402.4 by revising paragraph (b) to read as follows:

§ 402.4 Tolls.

* * * * *

(b) The toll is assessed against the vessel and its cargo for a complete or partial transit of the Seaway and covers a single trip in one direction.

* * * * *

■ 4. Amend § 402.8 by revising paragraphs (b) introductory text, (c), (e), and (f) and adding paragraph (g) to read as follows:

§ 402.8 Gateway Incentive.

* * * * *

(b) To be eligible for the refund applicable under the Gateway Incentive program, a shipper/receiver, or its representative, must:

* * * * *

(c) The shipper/receiver, or its representative, will qualify annually for the negotiated toll reduction upon completion of the annual volume commitment.

* * * * *

(e) The shipper/receiver, or its representative, will provide the Manager with a request for the Gateway Incentive refund, together with copies of any documents required to support the request, within sixty (60) days of the close of the navigation season. Requests for refunds should be submitted to the Manager who will be responsible for reviewing all documents and data and recommending the refund under the Gateway Incentive.

(f) The negotiated Gateway Incentive percentage of tolls reduction paid in respect of qualifying cargo shipped will be refunded by the Manager after the close of the navigation season, once the Manager has confirmed through the review of submitted support documents that the shipper/receiver has met the volume commitment. The Manager reserves the right to require the ultimate origin and destination of cargoes to validate the commitment.

(g) The Manager reserves the right to immediately terminate any Gateway Incentive agreement.

■ 5. Revise § 402.12 to read as follows:

§ 402.12 Schedule of tolls.

TABLE 1 TO § 402.12

Item	Column 1	Column 2	Column 3
	Description of charges	Rate ($)—Montreal to or from Lake Ontario (5 locks)	Rate ($)—Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
1	Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		
	(1) A charge per gross registered ton of the vessel, applicable whether the vessel is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time [1]		
	(a) All vessels excluding passenger vessels	0.1218	0.1949.
	(b) Passenger vessels	0.3655	0.5846.
	(2) A charge per metric ton of cargo as certified on the vessel's manifest or other document, as follows:		
	(*a*) Bulk cargo	1.2628	0.8620.
	(*b*) General cargo	3.0428	1.3796.
	(*c*) Steel slab	2.7539	0.9876.
	(*d*) Containerized cargo	1.2628	0.8620.
	(*e*) Government aid cargo	n/a	n/a.
	(*f*) Grain	0.7758	0.8620.
	(*g*) Coal	0.7758	0.8620.
	(3) A charge per passenger per lock	0.0000	0.0000.
	(4) A lockage charge per Gross Registered Ton of the vessel, as defined in item 1(1), applicable whether the vessel is wholly or partially laden, or is in ballast, for transit of the Welland Canal in either direction by cargo vessels	n/a	0.3247.
	Up to a maximum charge per vessel	n/a	4541.6800.
2	Subject to item 3, for partial transit of the Seaway	20 per cent per lock of the applicable charge under items 1(1), 1(2) and 1(4) plus the applicable charge under items 1(3).	13 per cent per lock of the applicable charge under items 1(1), 1(2) and 1(4) plus the applicable charge under items 1(3).
3	Minimum charge per vessel per lock transited for full or partial transit of the Seaway	31.5244 [2]	31.5224.
4	A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes [3]	30.00 [2]	30.00.
5	Under the New Business Initiative Program, for cargo accepted as New Business, a percentage rebate on the applicable cargo charges for the approved period	20%	20%.
6	Under the Volume Rebate Incentive program, a retroactive percentage rebate on cargo tolls on the incremental volume calculated based on the pre-approved maximum volume	10%	10%.
7	Under the New Service Incentive Program, for New Business cargo moving under an approved new service, an additional percentage refund on applicable cargo tolls above the New Business rebate	20%	20%.

[1] Or under the US GRT for vessels prescribed prior to 2002.

[2] The applicable charged under item 3 at the Great Lakes St. Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)). The other charges are in Canadian dollars and are for the Canadian share of tolls.

[3] The applicable charge at the Great Lakes St. Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $30 U.S. or $30 Canadian per lock.

[4] $5.00 discount per lock applicable on ticket purchased for Canadian locks via online reservation and payment system.

Issued at Washington, DC, under authority delegated at 49 CFR part 1.101 Great Lakes St. Lawrence Seaway Development Corporation.

Carrie Lavigne,

Chief Counsel.

[FR Doc. 2023–05007 Filed 3–10–23; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AR74

Updating Presumptive Radiation Locations Based on the PACT Act

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this final rule to amend its adjudication regulations to add more presumptive exposure locations for radiation, as legislated in the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (the PACT Act). The PACT Act expands and extends eligibility for VA benefits for Veterans with toxic exposures, and Sections 401 and 402 specifically ease the evidentiary burden for Veterans who file claims with VA based on radiation exposure in certain locations. This final rule chronicles those sections of the PACT Act in VA regulations.

DATES: This final rule is effective March 13, 2023.

Applicability Date: This final rule merely restates, in VA regulations, provisions of the PACT Act that took effect on August 10, 2022. Pursuant to that statutory authority, the provisions restated in this final rule shall apply to all applications for benefits received by VA on or after August 10, 2022 or that were pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on August 10, 2022.

FOR FURTHER INFORMATION CONTACT: Bryant Coleman, Regulations Analyst; Robert Parks, Chief, Regulations Staff (211), Compensation Service (21C), 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. PACT Act Background

On August 10, 2022, President Biden signed into law the PACT Act, Public Law 117–168, to improve access to VA benefits for Veterans who were exposed to toxic substances during military service. Specifically, the PACT Act expands and extends eligibility for VA benefits for Veterans with certain toxic exposures. Based on the PACT Act, the following regulations will be updated.

II. Changes Based on Section 401

Section 401 of the PACT Act amends 38 U.S.C. 1112(c)(3)(B) by adding a new clause (v), which adds the cleanup of Enewetak Atoll during the period beginning on January 1,1977, and ending on December 31,1980, as a radiation-risk activity. To that effect, VA will add 38 CFR 3.309(d)(3)(ii)(F) to cover the Veterans who participated in cleanup of Enewetak Atoll during this period as radiation exposed Veterans for purposes of presumptions of service connection of certain disabilities by VA. This addition makes VA regulation consistent with 38 U.S.C. 1112(c)(3)(B)(v).

III. Changes Based on Section 402

Section 402 of the PACT Act amends 38 U.S.C. 1112(c)(3)(B) by adding a new clause (vi), which adds participation in nuclear response efforts in the vicinity of Palomares, Spain, during the period beginning January 17,1966, and ending March 31,1967, as a radiation-risk activity. To that effect, VA will add 38 CFR 3.309(d)(3)(ii)(G) to cover Veterans who participated in this nuclear response near Palomares, Spain, during this period as radiation exposed Veterans for purposes of presumptions of service connection of certain disabilities by VA. This addition makes VA regulation consistent with 38 U.S.C. 1112(c)(3)(B)(vi).

Additionally, Section 402 of the PACT Act adds a new clause (vii) to 38 U.S.C. 1112(c)(3)(B), which adds participation in nuclear response efforts in the vicinity of Thule Air Force Base, Greenland, during the period beginning January 21, 1968, and ending September 25, 1968, as a radiation-risk activity. To that effect, VA will add 38 CFR 3.309(d)(3)(ii)(H) to cover Veterans who participated in this nuclear response near Thule Air Force Base, Greenland, during this period as radiation exposed Veterans for purposes of presumptions of service connection of certain disabilities by VA. This addition makes VA regulation consistent with 38 U.S.C. 1112(c)(3)(B)(vii).

Administrative Procedure Act

Because this rule merely restates statutory text enacted by Congress, the Administrative Procedure Act's requirements of notice and an opportunity for public comment, and of a delayed effective date, do not apply. *See* 5 U.S.C. 553(b)(A); *id.* 553(d)(2). To the extent that notice and comment and a delayed effective date would otherwise be required, the Secretary of Veterans Affairs finds good cause under the provisions of 5 U.S.C. 553(b)(B) and (d)(3) to publish this rule without prior opportunity for public comment and with an immediate effective date. Pursuant to 5 U.S.C. 553(b)(B), notice and opportunity for public comment are not required with respect to a rulemaking when an agency finds good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Because this rule is limited to incorporating text already enacted by Congress, without change or addition, advance notice and public comment beyond that provided in the legislation itself is unnecessary. Similarly, because this rule merely chronicles in regulation what is already law, there is good cause for the rule to be effective immediately. 5 U.S.C. 553(d)(3).

Executive Orders 12866 and 13563

Executive Orders (E.O.) 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). E.O. 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 a significant regulatory action under E.O. 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

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

Although this final rule contains collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), there are no provisions associated with this

rulemaking constituting any new collection of information or any revisions to the existing collection of information. Specifically, the information collection requirements associated with this final rule are related to the filing of disability benefits claims (VA Form 21–526EZ) as well as Disability Benefits Questionnaires (DBQs) (Groups 3 and 4) which enable claimants to gather the necessary information from treating physicians as to the current symptoms and severity of a disability. The collection of information for 38 CFR 3.309(d)(3)(ii) is currently approved by Office of Management and Budget (OMB) and has been assigned OMB control number 2900–0747.

Assistance Listing

The Assistance Listing numbers and titles for this rule are 64.101, Burial Expenses Allowance for Veterans; 64.105, Pension to Veterans, Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Congressional Review Act

Pursuant to 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 3

Claims, disability benefits, health care, pensions, radioactive materials, Veterans, Vietnam.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on January 23, 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 amends 38 CFR part 3 as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.309 by adding paragraphs (d)(3)(ii)(F) through (H) to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(d) * * *

(3) * * *

(ii) * * *

(F) Cleanup of Enewetak Atoll during the period beginning on January 1,1977, and ending on December 31, 1980.

(G) Onsite participation in the response effort following the collision of a United States Air Force B–52 bomber and refueling plane that caused the release of four thermonuclear weapons in the vicinity of Palomares, Spain, during the period beginning January 17, 1966, and ending March 31, 1967.

(H) Onsite participation in the response effort following the on-board fire and crash of a United States Air Force B–52 bomber that caused the release of four thermonuclear weapons in the vicinity of Thule Air Force Base, Greenland, during the period beginning January 21, 1968, and ending September 25, 1968.

* * * * *

[FR Doc. 2023–04514 Filed 3–10–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 1037

[EPA–HQ–OAR–2019–0055; FRL–7165–04–OAR]

RIN 2060–AU41

Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is issuing a correction to a final rule published in the **Federal Register** of Tuesday, January 24, 2023, which will be effective March 27, 2023. The final rule established new emission standards for heavy-duty highway engines, along with several amendments for a wide range of highway and nonroad engines and vehicles. This document corrects two amendatory instructions. These corrections do not include any substantive change to the final rule.

DATES: This correction is effective March 27, 2023.

ADDRESSES: Docket: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0055. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at Air and Radiation Docket and Information Center, EPA Docket Center, EPA/DC, EPA WJC West Building, 1301 Constitution Ave. NW, Room 3334, Washington, DC. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Alan Stout, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4805; email address: *stout.alan@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is making two corrections for inadvertent errors in the amendatory instructions for the final rule:

- Instruction 42 refers to removing 40 CFR part 86, subpart I, for smoke test procedures, but mistakenly identifies section numbers associated with 40 CFR part 86, subpart L, instead of the section numbers associated with 40 CFR part 86, subpart I.
- Instruction 104 refers to amending 40 CFR 1037.125(a), but should have referred more specifically to amending 40 CFR 1037.125 (a) introductory text.

Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal

and opportunity for comment because such notice and opportunity for comment is unnecessary as the technical correction is for minor typographical, non-substantive errors only.

Correction

In FR Doc. 2022–27957 appearing on page 4296 in the **Federal Register** of Tuesday, January 24, 2023, the following are corrections are made.

§§ 86.884–1 through 86.884–14 [Removed and Reserved]

■ 1. On page 4475, in the second column, amendatory instruction 42 is corrected to read ''42. Subpart I, consisting of §§ 86.884–1 through 86.884–14, is removed and reserved.''

§ 1037.125 [Corrected]

■ 2. On page 4637, in the third column, amendatory instruction 104 is corrected to read ''104. Amend § 1037.125 by revising paragraphs (a) introductory text and (d) to read as follows:''.

Joseph Goffman,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2023–05000 Filed 3–10–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0297; FRL–10642–01–OCSPP]

Various Fragrance Components in Pesticide Formulations; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of various fragrance components listed in Unit II of this document when used as inert ingredients in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils when the end-use concentration does not exceed 100 parts per million (ppm). Innovative Reform Group, on behalf of The Clorox Company, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of exemptions from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of these various fragrance components, when used in accordance with the terms of the exemptions.

DATES: This regulation is effective March 13, 2023. Objections and requests for hearings must be received on or before May 12, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0297, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–2875; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0297 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before May 12, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0297, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of June 24, 2020 (85 FR 37806) (FRL–10010–82), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11372) by Innovative Reform Group on behalf of The Clorox Company, 4900 Johnson Dr., Pleasanton, CA 94588. The petition requested that

40 CFR 180.940(a) be amended by establishing exemptions from the requirement of a tolerance for residues of (E)-2-Hexen-1-yl acetate (CAS Reg. No. 2497–18–9); 1,3-Nonanediol acetate (mixed esters) (CAS Reg. No. 1322–17–4); 10-Undecenal (CAS Reg. No. 112–45–8); 10-Undecenoic acid (CAS Reg. No. 112–38–9); 10-Undecenoic acid, ethyl ester (CAS Reg. No. 692–86–4); 1H–3a,7-Methanoazulen-6-ol, octahydro-3,6,8,8-tetramethyl-,[3R-(3.α,3a.β,6.α,7.β,8aα)] (CAS Reg. No. 77–53–2); 1-Hexanol, 3,5,5-trimethyl- (CAS Reg. No. 3452–97–9); 1-pentanol (CAS Reg. No. 71–41–0); 2,4-Hexadienyl isobutyrate (CAS Reg. No. 16491–24–0); 2,5,7-Octatrien-1-ol, 2,6-dimethyl0, 1-acetate (CAS Reg. No. 197098–61–6); 2,6,6-Trimethyl-1&2-cyclohexen-1-carboxaldehyde (CAS Reg. No. 432–25–7); 2,6,6-Trimethyl-1-cyclohexen-1-acetaldehyde (CAS Reg. No. 472–66–2); 2,6-Nonadien-1-ol (CAS Reg. No. 7786–44–9); 2,6-Nonadienal diethyl acetal (CAS Reg. No. 67674–36–6); 2-Cyclohexylethyl acetate (CAS Reg. No. 21722–83–8); 2-Dodecenal (CAS Reg. No. 4826–62–4); 2-Formyl-6,6-dimethylbicyclo(3.1.1)hept-2-ene (CAS Reg. No. 564–94–3); 2-Hexen-1-ol (CAS Reg. No. 2305–21–7); 2-Methyl butyl acetate (CAS Reg. No. 624–41–9); 2-Methylbutyric acid (CAS Reg. No. 116–53–0); 2-Methyloctanal (CAS Reg. No. 7786–29–0); 2-Methylpent-2-en-1-oic acid (CAS Reg. No. 3142–72–1); 2-Methyl-trans-2-butenoic acid (CAS Reg. No. 80–59–1); 2-Nonenal (CAS Reg. No. 2463–53–8); 3,7-Dimethyl-1-octanol (CAS Reg. No. 106–21–8); 3,7-Dimethyl-6-octen-1-ol (CAS Reg. No. 106–22–9); 3,7-Dimethyl-6-octenoic acid (CAS Reg. No. 502–47–6); 3-Hexen-1-ol, (3Z)- (CAS Reg. No. 928–96–1); 3-Hexen-1-ol, acetate, (3Z)- (CAS Reg. No. 3681–71–8); 3-hexenyl 2-methylbutanoate (CAS Reg. No. 10094–41–4); 3-Hexenyl formate (CAS Reg. No. 2315–09–5); 3-Methyl-2-buten-1-ol (CAS Reg. No. 556–82–1); 3-Methylbutyraldehyde (CAS Reg. No. 590–86–3); 3-Methylcrotonic acid (CAS Reg. No. 541–47–9); 4-Carvomenthenol (CAS Reg. No. 562–74–3); 4-Decenal (CAS Reg. No. 30390–50–2); 5-Octen-1-ol, (5Z)- (CAS Reg. No. 64275–73–6); 9-Decenal (CAS Reg. No. 39770–05–3); 9-Undecenal (CAS Reg. No. 143–14–6); Acetal (CAS Reg. No. 105–57–7); Acetic acid, octyl ester (CAS Reg. No. 112–14–1); Amyl butyrate (CAS Reg. No. 540–18–1); Amyl formate (CAS Reg. No. 638–49–3); Amyl hexanoate (CAS Reg. No. 540–07–8); Bois de rose oil (CAS Reg. No. 8015–77–8); Butanoic acid, 3-methyl-, 2-methylpropyl ester (CAS Reg. No. 589–59–3); Butyl 10-undecenoate (CAS Reg. No. 109–42–2); Butyl acetate (CAS Reg. No. 123–86–4); Butyl butyrate (CAS Reg. No. 109–21–7); Butyl butyryllactate (CAS Reg. No. 7492–70–8); Butyl isovalerate (CAS Reg. No. 109–19–3); Chamomile flower, Roman, oil (Anthemis nobilis L.) (CAS Reg. No. 8015–92–7); cis-3-Hexenyl isobutyrate (CAS Reg. No. 41519–23–7); cis-3-Hexenyl propionate (CAS Reg. No. 33467–74–2); cis-3-Hexenyl tiglate (CAS Reg. No. 67883–79–8); cis-α-Santalol (CAS Reg. No. 115–71–9); cis-β-Santalol (CAS Reg. No. 77–42–9); Citral (CAS Reg. No. 5392–40–5); Citral dimethyl acetal (CAS Reg. No. 7549–37–3); Citronellal (CAS Reg. No. 106–23–0); Citronelloxyacetaldehyde (CAS Reg. No. 7492–67–3); Citronellyl butyrate (CAS Reg. No. 141–16–2); Citronellyl formate (CAS Reg. No. 105–85–1); Citronellyl isobutyrate (CAS Reg. No. 97–89–2); Citronellyl propionate (CAS Reg. No. 141–14–0); Citronellyl tiglate (CAS Reg. No. 24717–85–9); Clary oil (*Salvia sclarea L.*) (CAS Reg. No. 8016–63–5); Cognac oil, green (CAS Reg. No. 8016–21–5); Coriander oil (*Coriandrum sativum L.*) (CAS Reg. No. 8008–52–4); Decanoic acid, 4-hydroxy-4-methyl-,γ.-lactone (CAS Reg. No. 7011–83–8); Decyl acetate (CAS Reg. No. 112–17–4); Diethyl sebacate (CAS Reg. No. 110–40–7); Diethyl tartrate (CAS Reg. No. 87–91–2); Dimethylcyclohex-3-ene-1-carbaldehyde (CAS Reg. No. 27939–60–2); DL-Tartaric acid (CAS Reg. No. 133–37–9); Ethyl 2-hexylacetoacetate (CAS Reg. No. 29214–60–6); Ethyl 2-methyl-3-pentenoate (CAS Reg. No. 1617–23–8); Ethyl 2-methylbutyrate (CAS Reg. No. 7452–79–1); Ethyl 2-methylpentanoate (CAS Reg. No. 39255–32–8); Ethyl 3-hydroxybutyrate (CAS Reg. No. 5405–41–4); Ethyl formate (CAS Reg. No. 109–94–4); Ethyl isovalerate (CAS Reg. No. 108–64–5); ethyl lactate (CAS Reg. No. 97–64–3); Ethyl levulinate (CAS Reg. No. 539–88–8); Ethyl propionate (CAS Reg. No. 105–37–3); Ethyl tiglate (CAS Reg. No. 5837–78–5); Farnesol (CAS Reg. No. 4602–84–0); Farnesyl acetate (CAS Reg. No. 29548–30–9); gamma-Valerolactone (CAS Reg. No. 108–29–2); Geranic acid (CAS Reg. No. 459–80–3); Geraniol (CAS Reg. No. 106–24–1); Geranyl butyrate (CAS Reg. No. 106–29–6); Geranyl formate (CAS Reg. No. 105–86–2); Geranyl isobutyrate (CAS Reg. No. 2345–26–8); Geranyl propionate (CAS Reg. No. 105–90–8); Geranyl tiglate (CAS Reg. No. 7785–33–3); Helichrysum leaf oil (*Helichrysum angustifolium*) (CAS Reg. No. 8023–95–8); Heptyl acetate (CAS Reg. No. 112–06–1); Hexadecanoic acid (CAS Reg. No. 57–10–3); Hexadecanoic acid, ethyl ester (CAS Reg. No. 628–97–7); Hexyl 2-methylbutanoate (CAS Reg. No. 10032–15–2); Hexyl octanoate (CAS Reg. No. 1117–55–1); Hydroxycitronellal dimethyl acetal (CAS Reg. No. 141–92–4); Hyssop oil (Hyssopus officinalis L.) (CAS Reg. No. 8006–83–5); Isoamyl acetate (CAS Reg. No. 123–92–2); Isoamyl alcohol (CAS Reg. No. 123–51–3); Isoamyl isovalerate (CAS Reg. No. 659–70–1); Isoamyl propionate (CAS Reg. No. 105–68–0); Isobutyl 2-butenoate (CAS Reg. No. 589–66–2); Isobutyl angelate (CAS Reg. No. 7779–81–9); Isobutyl butyrate (CAS Reg. No. 539–90–2); Isobutyraldehyde (CAS Reg. No. 78–84–2); Isobutyric acid (CAS Reg. No. 79–31–2); Isovaleric acid (CAS Reg. No. 503–74–2); Jasmine lactone (CAS Reg. No. 25524–95–2); laevo-Bornyl acetate (CAS Reg. No. 5655–61–8); Lauryl acetate (CAS Reg. No. 112–66–3); Levulinic acid (CAS Reg. No. 123–76–2); Linalool (CAS Reg. No. 78–70–6); Linalool acetate (CAS Reg. No. 115–95–7); Linalyl formate (CAS Reg. No. 115–99–1); Linalyl hexanoate (CAS Reg. No. 7779–23–9); Linalyl isobutyrate (CAS Reg. No. 78–35–3); Linalyl isovalerate (CAS Reg. No. 1118–27–0); Linalyl propionate (CAS Reg. No. 144–39–8); Linoleic acid (CAS Reg. No. 60–33–3); Linoleic acid, methyl ester (CAS Reg. No. 112–63–0); Lovage oil (*Levisticum officinale Koch*) (CAS Reg. No. 8016–31–7); Methyl 2-methylbutyrate (CAS Reg. No. 868–57–5); Methyl 3,7-dimethyl-6-octenoate (CAS Reg. No. 2270–60–2); Methyl 3-nonenoate (CAS Reg. No. 13481–87–3); Methyl butyrate (CAS Reg. No. 623–42–7); Methyl hexanoate (CAS Reg. No. 106–70–7); Methyl linolenate (CAS Reg. No. 301–00–8); Methyl octanoate (CAS Reg. No. 111–11–5); Methyl tetradecanoate (CAS Reg. No. 124–10–7); Methyl undec-10-enoate (CAS Reg. No. 111–81–9); Musk ambrette (CAS Reg. No. 123–69–3); n-Butyl 2-methylbutyrate (CAS Reg. No. 15706–73–7); Nerolidiol (CAS Reg. No. 142–50–7); Neryl acetate (CAS Reg. No. 141–12–8); Neryl formate (CAS Reg. No. 2142–94–1); Nonyl acetate (CAS Reg. No. 143–13–5); Octadecanoic acid (CAS Reg. No. 57–11–4); Oil of citronella (CAS Reg. No. 8000–29–1); Oils, geranium (CAS Reg. No. 8000–46–2); Oils, lavender (CAS Reg. No. 8000–28–0); Oils, lemon, terpene-free (CAS Reg. No. 68648–39–5); Oils, palmarosa (CAS Reg. No. 8014–19–5); Oleic acid (CAS Reg. No. 112–80–1); Oleic acid, ethyl ester (CAS Reg. No. 111–62–6); Oleyl alcohol (CAS Reg. No. 143–28–2); Orange flower water absolute (CAS Reg. No. 8030–28–2); Oxacycloheptadec-10-ene-2-one (CAS Reg. No. 28645–51–4); p-α,α-Trimethylbenzyl alcohol (CAS Reg. No. 1197–01–9); Petitgrain Paraguay oil (CAS Reg. No. 8016–44–2

(NEW CAS Reg. No. 8014–17–3); p-Mentha-1,8-dien-7-ol (CAS Reg. No. 536–59–4); p-Mentha-1,8-dien-7-yl acetate (CAS Reg. No. 15111–96–3); Propanoic acid (CAS Reg. No. 79–09–4); Propylene glycol (CAS Reg. No. 57–55–6); Pyruvic acid (CAS Reg. No. 127–17–3); Sandalwood yellow oil (*Santalum album L.*) (CAS Reg. No. 8006–87–9); Santalol (CAS Reg. No. 11031–45–1); Sclareol (CAS Reg. No. 515–03–7); Spike lavender oil (Lavandula spp.) (CAS Reg. No. 8016–78–2); Tartaric acid (CAS Reg. No. 87–69–4); Terpinyl acetate (Isomer mixture) (CAS Reg. No. 8007–35–0); Tetradecanoic acid, ethyl ester (CAS Reg. No. 124–06–1); Tetrahydrogeranial (CAS Reg. No. 5988–91–0); trans-3-Heptenyl 2-methylpropanoate (CAS Reg. No. 67801–45–0); Violet leaves absolute (Viola odorata L.) (CAS Reg. No. 90147–36–7); α,α-Dimethylphenethyl alcohol (CAS Reg. No. 100–86–7); α-Terpinyl propionate (CAS Reg. No. 80–27–3); γ-Butyrolactone (CAS Reg. No. 96–48–0); γ-Dodecalactone (CAS Reg. No. 2305–05–7); δ-Dodecalactone (CAS Reg. No. 713–95–1); δ-Octalactone (CAS Reg. No. 698–76–0); ε-Decalactone (CAS Reg. No. 5579–78–2); ω-6-Hexadecenlactone (CAS Reg. No. 7779–50–2); when used as inert ingredients (fragrance components) in pesticide formulations applied to food contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment with end-use concentrations not to exceed 100 ppm. That document referenced a summary of the petition prepared by Innovative Reform Group on behalf of The Clorox Company, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. When making a safety determination for an exemption for the requirement of a tolerance, FFDCA section 408(c)(2)(B) directs EPA to consider the considerations in section 408(b)(2)(C) and (D). Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Section 408(b)(2)(D) lists other factors for EPA's consideration in making safety determinations, *e.g.,* the validity, completeness, and reliability of available data, nature of toxic effects, available information concerning the cumulative effects of the pesticide chemical and other substances with a common mechanism of toxicity, and available information concerning aggregate exposure levels to the pesticide chemical and other related substances, among other factors.

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the various fragrance components identified in Unit II of this document, including exposure resulting from the exemptions established by this action. EPA's assessment of exposures and risks associated with these various fragrance components follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by the various fragrance components identified in Unit II, as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies, are discussed in this unit.

The Agency assessed these fragrance components via the Threshold of Toxicological Concern (TTC) approach as outlined by the European Food Safety Authority (EFSA) in their 2019 guidance document on the use of TTC in food safety assessment. Information regarding the database of studies and chemicals used to derive TTCs are reviewed therein. The TTC approach has been used by the Joint Expert Committee on Food Additives of the United Nations' (U.N.) Food and Agriculture Organization and the World Health Organization (JECFA), the former Scientific Committee on Food of the European Commission, the European Medicines Agency, and EFSA.

Information from JECFA reports as well as predictive toxicology using the Organisation for Economic Co-operation and Development (OECD) Quantitative Structure-Activity Relationships (QSAR) Toolbox was used to confirm that the fragrances listed in Unit II have low carcinogenic potential and are thus good candidates for the application of the TTC method. Although 27 chemicals had *in silico* carcinogenicity alerts,

JECFA concluded and EPA concurs that all fragrances listed in Unit II have low carcinogenic potential, based on *in vitro* and/or *in vivo* genotoxicity studies available on the chemical or structurally related chemicals. Therefore, the TTC method can be applied to these fragrances.

TTCs are derived from a conservative and rigorous approach to establish generic threshold values for human exposure at which a very low probability of adverse effects is likely. By comparing a range of compounds by Cramer Class (classes I, II, and III which correspond to the probability of low, moderate and high toxicity) and NOEL (no-observed-effect-level), fifth percentile NOELs were established for each Cramer Class as ''Human Exposure Thresholds''. These values were 3, 0.91 and 0.15 mg/kg/day for classes I, II, and III, respectively.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program.*

The human exposure threshold value for threshold (*i.e.,* non-cancer) risks is based upon Cramer structural class. All of the fragrance components listed in Unit II are in Cramer Class I, which is defined as chemicals of simple structure and efficient modes of metabolism, suggesting low oral toxicity. Therefore, the NOEL of 3 mg/kg/day is selected as the point of departure for all exposure scenarios assessed (chronic dietary, incidental oral, dermal and inhalation exposures).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to the fragrance components listed in Unit II (*e.g.,* ingesting foods that come in contact with surfaces treated with pesticide formulations containing these fragrance components, and drinking water exposures), EPA considered exposure under the proposed exemptions from the requirement of a tolerance.

The dietary assessment for food contact sanitizer solutions calculated the Daily Dietary Dose (DDD) and the Estimated Daily Intake (EDI). The assessment considered application rates, residual solution or quantity of solution remaining on the treated surface without rinsing with potable water, surface area of the treated surface which comes into contact with food, pesticide migration fraction, and body weight. These assumptions are based on U.S. Food and Drug Administration guidelines.

2. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

The fragrance components listed in Unit II may be used as inert ingredients in products that are registered for specific uses that may result in residential exposure, such as pesticides used in and around the home. The Agency conducted a conservative assessment of potential residential exposure by assessing various fragrance components in disinfectant-type uses (indoor scenarios). The Agency's assessment of adult residential exposure combines high-end dermal and inhalation handler exposure from indoor hard surface, wiping, and aerosol spray uses. The Agency's assessment of children's residential exposure includes total post-application exposures associated with contact with treated indoor surfaces (dermal and hand-to-mouth exposures).

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Based on the lack of toxicity in the available database, EPA has not found the fragrance components listed in Unit II to share a common mechanism of toxicity with any other substances, nor do they appear to produce a toxic metabolite produced by other substances. For the purposes of the tolerance exemptions established in this rule, therefore, EPA has assumed that the fragrance components listed in Unit II do not have common mechanisms of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

The FQPA SF has been reduced to 1X in this risk assessment because clear NOELs and LOELs were established in the studies used to derive the endpoints (which included developmental and reproductive toxicity studies), maternal and developmental-specific 5th percentile NOELs indicate low potential for offspring susceptibility, and the conservative assumptions made in the exposure assessment are unlikely to underestimate risk.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the

estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute aggregate risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effects resulting from a single oral exposure were identified and no acute dietary endpoint was selected for any of the fragrance components listed in Unit II. Therefore, these fragrance components are not expected to pose an acute risk.

2. *Short-term aggregate risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). For residential handler short-term exposure scenarios, MOEs ranged from 140 to 2,500, while for residential post-application exposure scenarios, MOEs ranged from 380 to 7,400. These MOEs are greater than the level of concern (LOC) of 100 and therefore are not of concern. The short-term aggregate MOE is 109 for adults and 135 for children, which are greater than the LOC of 100 and therefore are not of concern.

3. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, the fragrance components listed in Unit II are not currently used as an inert ingredient in pesticide products that are registered for any use patterns that would result in intermediate-term residential exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for these fragrance components.

4. *Chronic aggregate risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to the fragrance components listed in Unit II from food and water will utilize 19% of the cPAD for the U.S. population and 48% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Chronic residential exposure to residues of these fragrance components is not expected. Therefore, the chronic aggregate risk is equal to the chronic dietary exposure for children 1 t o2 years old (48% of the PAD).

5. *Aggregate cancer risk for U.S. population.* There is low concern for genotoxicity/carcinogenicity in humans for the fragrance components listed in Unit II of this document. Therefore, the assessment under the TTC value for non-cancer risks is protective for all risks, including carcinogenicity.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to residues of the fragrance components listed in Unit II.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of the fragrance components listed in Unit II of this document in or on any food commodities. EPA is establishing limitations on the amount of these fragrance components that may be used in antimicrobial pesticide formulations. These limitations will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use that contains these fragrance components in excess of 100 ppm in the final pesticide formulation.

VI. Conclusions

Therefore, exemptions from the requirement of a tolerance are established for residues of the various fragrance components listed in Unit II of this document when used as inert ingredients (fragrance components) in pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils with an end-use concentration not to exceed 100 ppm under 40 CFR 180.940(a).

VII. Statutory and Executive Order Reviews

This action establishes exemptions from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the National Government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section

12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.940 is amended by adding in alphabetical order the following inert ingredients to table 1 to paragraph (a):

■ a. Acetal.
■ b. Acetic acid, octyl ester.
■ c. Amyl butyrate.
■ d. Amyl formate.
■ e. Amyl hexanoate.
■ f. Bois de rose oil.
■ g. Butanoic acid, 3-methyl-, 2-methylpropyl ester.
■ h. Butyl acetate.
■ i. Butyl butyrate.
■ j. Butyl butyryllactate.
■ k. Butyl isovalerate.
■ l. n-Butyl 2-methylbutyrate.
■ m. Butyl 10-undecenoate.
■ n. γ-Butyrolactone.
■ o. 4-Carvomenthenol.
■ p. Chamomile flower, Roman, oil (Anthemis nobilis L.).
■ q. Citral dimethyl acetal.
■ r. Citronellal.
■ s. Citronelloxyacetaldehyde.
■ t. Citronellyl butyrate.
■ u. Citronellyl formate.
■ v. Citronellyl isobutyrate.
■ w. Citronellyl propionate.
■ x. Citronellyl tiglate.
■ y. Clary oil (Salvia sclarea L.).
■ z. Cognac oil, green.
■ aa. Coriander oil (Coriandrum sativum L.).
■ bb. 2-Cyclohexylethyl acetate.
■ cc. ε-Decalactone.
■ dd. Decanoic acid, 4-hydroxy-4-methyl-γ-lactone.
■ ee. 4-Decenal.
■ ff. 9-Decenal.
■ gg. Decyl acetate.
■ hh. Diethyl sebacate.
■ ii. Diethyl tartrate.
■ jj. 3,7-Dimethyl-6-octenoic acid.
■ kk. Dimethylcyclohex-3-ene-1-carbaldehyde.
■ ll. α,α-Dimethylphenethyl alcohol.
■ mm. γ-Dodecalactone.
■ nn. δ-Dodecalactone.
■ oo. 2-Dodecenal.
■ pp. Ethyl formate.
■ qq. Ethyl 2-hexylacetoacetate.
■ rr. Ethyl 3-hydroxybutyrate.
■ ss. Ethyl isovalerate.
■ tt. Ethyl levulinate.
■ uu. Ethyl 2-methyl-3-pentenoate.
■ vv. Ethyl 2-methylpentanoate.
■ ww. Ethyl propionate.
■ xx. Ethyl tiglate.
■ yy. Farnesol.
■ zz. Farnesyl acetate.
■ aaa. 2-Formyl-6,6-dimethylbicyclo(3.1.1)hept-2-ene.
■ bbb. Geranic acid.
■ ccc. Geraniol.
■ ddd. Geranyl butyrate.
■ eee. Geranyl formate.
■ fff. Geranyl isobutyrate.
■ ggg. Geranyl propionate.
■ hhh. Geranyl tiglate.
■ iii. Helichrysum leaf oil (Helichrysum angustifolium).
■ jjj. trans-3-Heptenyl 2-methylpropanoate.
■ kkk. Heptyl acetate.
■ lll. Hexadecanoic acid.
■ mmm. Hexadecanoic acid, ethyl ester.
■ nnn. ω-6-Hexadecenlactone.
■ ooo. 2,4-Hexadienyl isobutyrate.
■ ppp. 1-Hexanol, 3,5,5-trimethyl-.
■ qqq. 2-Hexen-1-ol.
■ rrr. 3-Hexen-1-ol, (3Z)-.
■ sss. (E)-2-Hexen-1-yl acetate.
■ ttt. cis-3-Hexenyl isobutyrate.
■ uuu. cis-3-Hexenyl propionate.
■ vvv. cis-3-Hexenyl tiglate.
■ www. 3-Hexenyl formate.
■ xxx. Hexyl 2-methylbutanoate.
■ yyy. Hexyl octanoate.
■ zzz. Hydroxycitronellal dimethyl acetal.
■ aaaa. Hyssop oil (Hyssopus officinalis L.).
■ bbbb. Isoamyl isovalerate.
■ cccc. Isoamyl propionate.
■ dddd. Isobutyl angelate.
■ eeee. Isobutyl 2-butenoate.
■ ffff. Isobutyl butyrate.
■ gggg. Isobutyraldehyde.
■ hhhh. Isobutyric acid.
■ iiii. Isovaleric acid.
■ jjjj. Jasmine lactone.
■ kkkk. laevo-Bornyl acetate.
■ llll. Lauryl acetate.
■ mmmm. Levulinic acid.
■ nnnn. Linalool acetate.
■ oooo. Linalyl formate.
■ pppp. Linalyl hexanoate.
■ qqqq. Linalyl isobutyrate.
■ rrrr. Linalyl isovalerate.
■ ssss. Linalyl propionate.
■ tttt. Linoleic acid, methyl ester.
■ uuuu. Lovage oil (Levisticum officinale Koch).
■ vvvv. p-Mentha-1,8-dien-7-ol.
■ wwww. p-Mentha-1,8-dien-7-yl acetate.
■ xxxx. 1H-3a,7-Methanoazulen-6-ol, octahydro-3,6,8,8-tetramethyl-,[3R-(3.α,3a.β,6.α,7.β,8aα)].
■ yyyy. 3-Methyl-2-buten-1-ol.
■ zzzz. 2-Methyl butyl acetate.
■ aaaaa. 3-Methylbutyraldehyde
■ bbbbb. Methyl butyrate.
■ ccccc. 2-Methylbutyric acid.
■ ddddd. 3-Methylcrotonic acid.
■ eeeee. Methyl 3,7-dimethyl-6-octenoate.
■ fffff. Methyl hexanoate.
■ ggggg. Methyl linolenate.
■ hhhhh. Methyl 2-methylbutyrate.
■ iiiii. Methyl 3-nonenoate.
■ jjjjj. 2-Methyloctanal.
■ kkkkk. Methyl octanoate.
■ lllll. 2-Methylpent-2-en-1-oic acid.
■ mmmmm. Methyl tetradecanoate.
■ nnnnn. 2-Methyl-trans-2-butenoic acid.
■ ooooo. Methyl undec-10-enoate.
■ ppppp. Musk ambrette.
■ qqqqq. Nerolidiol.
■ rrrrr. Neryl formate.
■ sssss. 2,6-Nonadien-1-ol.
■ ttttt. 2,6-Nonadienal diethyl acetal.
■ uuuuu. 1,3-Nonanediol acetate (mixed esters).
■ vvvvv. 2-Nonenal.
■ wwwww. Nonyl acetate.
■ xxxxx. Octadecanoic acid.
■ yyyyy. δ-Octalactone.
■ zzzzz. 2,5,7-Octatrien-1-ol, 2,6-dimethyl0, 1-acetate.
■ aaaaaa. 5-Octen-1-ol, (5Z)-.
■ bbbbbb. Oil of citronella.
■ cccccc. Oils, geranium.
■ dddddd. Oils, lavender.
■ eeeeee. Oils, lemon, terpene-free.
■ ffffff. Oils, palmarosa.
■ gggggg. Oleic acid.
■ hhhhhh. Oleic acid, ethyl ester.
■ iiiiii. Oleyl alcohol.
■ jjjjjj. Orange flower water absolute.
■ kkkkkk. Oxacycloheptadec-10-ene-2-one.
■ llllll. 1-pentanol.
■ mmmmmm. Petitgrain Paraguay oil.
■ nnnnnn. Propanoic acid.
■ oooooo. Pyruvic acid.
■ pppppp. Sandalwood yellow oil (Santalum album L.).

■ qqqqqq. Santalol.
■ rrrrrr. cis-α-Santalol.
■ ssssss. cis-β-Santalol.
■ tttttt. Sclareol.
■ uuuuuu. Spike lavender oil (Lavandula spp.).
■ vvvvvv. Tartaric acid.
■ wwwwww. DL-Tartaric acid.
■ xxxxxx. α-Terpinyl propionate.
■ yyyyyy. Tetradecanoic acid, ethyl ester.
■ zzzzzz. Tetrahydrogeranial.
■ aaaaaaa. 2,6,6-Trimethyl-1-cyclohexen-1-acetaldehyde.
■ bbbbbbb. 2,6,6-Trimethyl-1&2-cyclohexen-1-carboxaldehyde.
■ ccccccc. p-α,α-Trimethylbenzyl alcohol.
■ ddddddd. 9-Undecenal.
■ eeeeeee. 10-Undecenal.
■ fffffff. 10-Undecenoic acid.
■ gggggggg. 10-Undecenoic acid, ethyl ester.
■ hhhhhhh. γ-Valerolactone.
■ ppppppp. Violet leaves absolute (Viola odorata L.).

The additions read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Pesticide chemical	CAS Reg. No.	Limits
* * *	* * *	*
Acetal	105–57–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	*
Acetic acid, octyl ester	112–14–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	*
Amyl butyrate	540–18–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Amyl formate	638–49–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Amyl hexanoate	540–07–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	*
Bois de rose oil	8015–77–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Butanoic acid, 3-methyl-, 2-methylpropyl ester	589–59–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	*
Butyl acetate	123–86–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	*
Butyl butyrate	109–21–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Butyl butyryllactate	7492–70–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	*
Butyl isovalerate	109–19–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
n-Butyl 2-methylbutyrate	15706–73–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Butyl 10-undecenoate	109–42–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
γ-Butyrolactone	96–48–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	*
4-Carvomenthenol	562–74–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Chamomile flower, Roman, oil (Anthemis nobilis L.).	8015–92–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	*
Citral dimethyl acetal	7549–37–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Citronellal	106–23–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	*
Citronelloxyacetaldehyde	7492–67–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	*
Citronellyl butyrate	141–16–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Citronellyl formate	105–85–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Citronellyl isobutyrate	97–89–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Citronellyl propionate	141–14–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
Citronellyl tiglate	24717–85–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Clary oil (Salvia sclarea L.)	8016–63–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Cognac oil, green	8016–21–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	*
Coriander oil (Coriandrum sativum L.)	8008–52–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	*
2-Cyclohexylethyl acetate	21722–83–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	*
ε-Decalactone	5579–78–2	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
* * *	* * *	* * *
Decanoic acid, 4-hydroxy-4-methyl-γ-lactone	7011–83–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
4-Decenal	30390–50–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
9-Decenal	39770–05–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Decyl acetate	112–17–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
Diethyl sebacate	110–40–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Diethyl tartrate	87–91–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
3,7-Dimethyl-6-octenoic acid	502–47–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
Dimethylcyclohex-3-ene-1-carbaldehyde	27939–60–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
α,α-Dimethylphenethyl alcohol	100–86–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
γ-Dodecalactone	2305–05–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
δ-Dodecalactone	713–95–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
2-Dodecenal	4826–62–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
Ethyl formate	109–94–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
Ethyl 2-hexylacetoacetate	29214–60–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
Ethyl 3-hydroxybutyrate	5405–41–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
Ethyl isovalerate	108–64–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
Ethyl levulinate	539–88–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Ethyl 2-methyl-3-pentenoate	1617–23–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Ethyl 2-methylpentanoate	39255–32–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
Ethyl propionate	105–37–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
Ethyl tiglate	5837–78–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
Farnesol	4602–84–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
Farnesyl acetate	29548–30–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
2-Formyl-6,6-dimethylbicyclo(3.1.1)hept-2-ene	564–94–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Geranic acid	459–80–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Geraniol	106–24–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
Geranyl butyrate	106–29–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
Geranyl formate	105–86–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Geranyl isobutyrate	2345–26–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Geranyl propionate	105–90–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Geranyl tiglate	7785–33–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
Helichrysum leaf oil (Helichrysum angustifolium).	8023–95–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	* * *	* * *
trans-3-Heptenyl 2-methylpropanoate	67801–45–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
Heptyl acetate	112–06–1	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
* * *	*	* * * *
Hexadecanoic acid	57–10–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Hexadecanoic acid, ethyl ester	628–97–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
ω-6-Hexadecenlactone	7779–50–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
2,4-Hexadienyl isobutyrate	16491–24–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
1-Hexanol, 3,5,5-trimethyl-	3452–97–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
2-Hexen-1-ol	2305–21–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
3-Hexen-1-ol, (3Z)-	928–96–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
(E)-2-Hexen-1-yl acetate	2497–18–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
cis-3-Hexenyl isobutyrate	41519–23–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
cis-3-Hexenyl propionate	33467–74–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
cis-3-Hexenyl tiglate	67883–79–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
3-Hexenyl formate	9/5/2315	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Hexyl 2-methylbutanoate	10032–15–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Hexyl octanoate	1117–55–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Hydroxycitronellal dimethyl acetal	141–92–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Hyssop oil (Hyssopus officinalis L.)	8006–83–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
* * *	*	* * * *
Isoamyl isovalerate	659–70–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Isoamyl propionate	105–68–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Isobutyl angelate	7779–81–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Isobutyl 2-butenoate	589–66–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Isobutyl butyrate	539–90–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Isobutyraldehyde	78–84–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Isobutyric acid	79–31–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Isovaleric acid	503–74–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Jasmine lactone	25524–95–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
laevo-Bornyl acetate	5655–61–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Lauryl acetate	112–66–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Levulinic acid	123–76–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Linalool acetate	115–95–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Linalyl formate	115–99–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Linalyl hexanoate	7779–23–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Linalyl isobutyrate	78–35–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Linalyl isovalerate	1118–27–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
Linalyl propionate	144–39–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Linoleic acid, methyl ester	112–63–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Lovage oil (Levisticum officinale Koch)	8016–31–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
p-Mentha-1,8-dien-7-ol	536–59–4	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
p-Mentha-1,8-dien-7-yl acetate	15111–96–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
1H–3a,7-Methanoazulen-6-ol, octahydro-3,6,8,8-tetramethyl-,[3R-(3.α,3a.β,6.α,7.β,8aα)].	77–53–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
3-Methyl-2-buten-1-ol	556–82–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
2-Methyl butyl acetate	624–41–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
3-Methylbutyraldehyde	590–86–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Methyl butyrate	623–42–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
2-Methylbutyric acid	116–53–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
3-Methylcrotonic acid	541–47–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Methyl 3,7-dimethyl-6-octenoate	2270–60–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Methyl hexanoate	106–70–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Methyl linolenate	301–00–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Methyl 2-methylbutyrate	868–57–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Methyl 3-nonenoate	13481–87–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
2-Methyloctanal	7786–29–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
Methyl octanoate	111–11–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
2-Methylpent-2-en-1-oic acid	3142–72–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Methyl tetradecanoate	124–10–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
2-Methyl-trans-2-butenoic acid	80–59–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Methyl undec-10-enoate	111–81–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Musk ambrette	123–69–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Nerolidiol	142–50–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Neryl formate	2142–94–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
2,6-Nonadien-1-ol	7786–44–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
2,6-Nonadienal diethyl acetal	67674–36–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
1,3-Nonanediol acetate (mixed esters)	1322–17–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
2-Nonenal	2463–53–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Nonyl acetate	143–13–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Octadecanoic acid	57–11–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
δ-Octalactone	698–76–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
2,5,7-Octatrien-1-ol, 2,6-dimethyl0, 1-acetate	197098–61–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
5-Octen-1-ol, (5Z)-	64275–73–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oil of citronella	8000–29–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oils, geranium	8000–46–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oils, lavender	8000–28–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oils, lemon, terpene-free	68648–39–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oils, palmarosa	8014–19–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oleic acid	112–80–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oleic acid, ethyl ester	111–62–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oleyl alcohol	143–28–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Orange flower water absolute	8030–28–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oxacycloheptadec-10-ene-2-one	28645–51–4	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
* * *	*	* * * *
1-pentanol	71–41–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Petitgrain Paraguay oil	8014–17–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Propanoic acid	79–09–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
* * *	*	* * * *
Pyruvic acid	127–17–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Sandalwood yellow oil (Santalum album L.)	8006–87–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Santalol	11031–45–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
cis-α-Santalol	115–71–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
cis-β-Santalol	77–42–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Sclareol	515–03–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Spike lavender oil (Lavandula spp.)	8016–78–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Tartaric acid	87–69–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
DL-Tartaric acid	133–37–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
α-Terpinyl propionate	80–27–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Tetradecanoic acid, ethyl ester	124–06–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Tetrahydrogeranial	5988–91–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
2,6,6-Trimethyl-1-cyclohexen-1-acetaldehyde	472–66–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
2,6,6-Trimethyl-1&2-cyclohexen-1-carboxaldehyde.	432–25–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
p-α,α-Trimethylbenzyl alcohol	1197–01–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
9-Undecenal	143–14–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
10-Undecenal	112–45–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
10-Undecenoic acid	112–38–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
10-Undecenoic acid, ethyl ester	692–86–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
γ -Valerolactone	108–29–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *
Violet leaves absolute (Viola odorata L.)	90147–36–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * * *

* * * * *

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Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 412

[Docket No. FSIS 2022–0015]

RIN 0583–AD87

Voluntary Labeling of FSIS-Regulated Products With U.S.-Origin Claims

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

ACTION: Proposed rule.

SUMMARY: FSIS is proposing to amend its regulations to define the conditions under which the labeling of meat, poultry, and egg products, as well as voluntarily-inspected products, may bear voluntary label claims indicating that the product is of United States origin. The Agency is taking this action to resolve consumer confusion surrounding current voluntary label claims related to the origin of FSIS-regulated products in the U.S. marketplace. Under this proposal, establishments would not need to include these claims on the label, but if they chose to include them, they would need to meet the requirements in this rule.

DATES: Comments must be received on or before May 12, 2023.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2022–0015. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 937–4272 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture; Telephone: (202) 937–4272.

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I. Executive Summary

To prevent the introduction of adulterated or misbranded products into commerce, FSIS implements a prior approval program for labels intended to be used on FSIS-regulated products (9 CFR part 412). Without approved labels, these products may not be sold, offered for sale, or otherwise distributed in commerce.

Certain categories of labels must be submitted to FSIS for review and approval before use on products in commerce. However, FSIS considers certain labels that comply with the Agency's labeling rules to be ''generically'' approved (9 CFR 412.2). Such labels are not submitted to FSIS, because they are deemed approved if they bear all applicable mandatory labeling features and are not false or misleading, and may be applied to product in commerce, provided that supporting documentation for any information on the label is part of the labeling record. One category of labels currently eligible for generic approval is labels bearing U.S.-origin claims, like ''Product of USA.''

FSIS recently conducted a comprehensive review of the Agency's current voluntary ''Product of USA'' labeling policy to help determine what the ''Product of USA'' label claim means to consumers. FSIS started this review after receiving several petitions stating that the voluntary label claim ''Product of USA'' is confusing to consumers. By law, no product may bear any false or misleading label, such as labeling which conveys any false impression or gives any false indication of origin. FSIS' review of the policy included a consumer survey on ''Product of USA'' labeling on beef and pork products. Based on the consumer survey results, reviews of consumer research, and comments received on the petitions, FSIS is proposing to amend its regulations to define the conditions under which voluntary claims may be used on the labels of meat, poultry, and egg products, as well as voluntarily-inspected products, to indicate that the products are of U.S. origin.

Under this proposed rule, two specific voluntary U.S.-origin label claims, ''Product of USA'' and ''Made in the USA'' (the ''authorized claims''), would be generically approved for use on single ingredient, FSIS-regulated products derived from animals born, raised, slaughtered, and processed in the United States. The two voluntary authorized label claims ''Product of USA'' and ''Made in the USA'' would also be generically approved for use on multi-ingredient FSIS-regulated products if: (1) All FSIS-regulated components of the product are derived from animals born, raised, slaughtered, and processed in the United States; and (2) All additional ingredients, other than spices and flavorings, are of domestic

origin (*i.e.,* all preparation and processing steps of the ingredients are completed in the United States).

This proposed rule would also allow for U.S.-origin label claims other than the two authorized claims ''Product of USA'' and ''Made in the USA.'' All U.S.-origin label claims that are not authorized claims are known as ''qualified claims.'' These qualified claims would need to include a description on the package of all preparation and processing steps (including slaughter) that occurred in the United States upon which the claim is made.[1] These would need to be positioned near the qualified claim and explain how the product compares to the regulatory criteria for use of the two authorized claims ''Product of USA'' and ''Made in the USA.'' For example, ''Sliced and packaged in the United States using imported pork'' could be a qualified claim. As with the two authorized claims ''Product of USA'' and ''Made in the USA,'' all qualified claims that meet the proposed regulatory requirements would be eligible for generic approval. The proposed rule would apply to domestic products.[2] For product exported from the United States, FSIS would continue to verify that labeling requirements for the applicable country are met, as shown in the FSIS Export Library.[3]

Establishments producing products covered by USDA's Agricultural Marketing Service's (AMS) Country of Origin (COOL) mandatory labeling regulations (see 7 CFR parts 60 and 65) would still need to comply with COOL requirements (see 9 CFR 317.8(b)(40)). AMS' COOL requires retailers, such as full-line grocery stores, supermarkets and club warehouse stores, to notify their customers with information regarding the source of certain foods.[4] Should this rule become final, any FSIS-regulated product that is also a commodity subject to COOL requirements must continue to comply with those requirements.

Section IV below contains an analysis of the proposed rule's expected costs and benefits, an explanation of the assumptions, alternative scenarios, and the expected impact on small businesses. The requirements in this proposed rule, if finalized, are estimated to result in a one-time relabeling cost for industry, annual recordkeeping costs, and one-time market testing costs. Combined and annualized assuming a 7-percent discount rate over 10 years, the total estimated industry cost would be $3 million. The proposed regulatory definitions of voluntary U.S.-origin claims align the meaning of those claims with consumers' understandings of the information conveyed by those claims, information that is valued by consumers. The proposed changes to the ''Product of USA'' voluntary labeling policy are intended to prevent false or misleading U.S.-origin labeling (see 9 CFR 317.8(a), 381.129(b), 590.411(f)(1)).[5] This would reduce the market failures associated with incorrect and asymmetric information. The proposed changes would benefit consumers by matching the voluntary authorized ''Product of USA'' and ''Made in the USA'' label claims with the definition that consumers likely expected (*i.e.,* product derived from animals born, raised, slaughtered, and processed in the United States). If finalized, the proposed changes would allow consumers to make informed purchasing decisions, resulting in an increase in consumer benefits and preventing market failures as shoppers will be better able to choose products according to their preferences.

II. Background

FSIS is responsible for ensuring that meat, poultry, and egg products are safe, wholesome, and properly labeled and packaged. The Agency administers a regulatory program for meat products under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), for poultry products under the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and for egg products under the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). FSIS also provides voluntary reimbursable inspection services under the Agricultural Marketing Act (AMA) (7 U.S.C. 1622 and 1624) for eligible products not requiring mandatory inspection under the FMIA, PPIA, and EPIA. These voluntary reimbursable inspection services include activities related to export certification (9 CFR 350.3(b), 362.2(b), and 592.20(d)); products containing meat and poultry that are not under mandatory FSIS inspection (9 CFR 350.3(c) and 362.2(a)); voluntary inspection of certain non-amenable species (9 CFR part 352, subpart A and 9 CFR part 362); and voluntary inspection of rabbits (9 CFR part 354). The requirements proposed under this rule for the two voluntary authorized claims ''Product of USA'' and ''Made in the USA'' and voluntary qualified U.S.-origin claims would apply to all products subject to FSIS' mandatory inspection or that are inspected under the voluntary inspection services provided by FSIS.[6] Establishments would not need to include these claims on the label, but if they chose to include them, they would need to meet the requirements in this proposed rule.

Under the mandates of the FMIA, PPIA, and EPIA, any meat, poultry, or egg product is misbranded if its labeling is false or misleading in any particular (21 U.S.C. 601(n)(1); 21 U.S.C. 453(h)(1); 21 U.S.C. 1036(b)). In particular, no product or any of its wrappers, packaging, or other containers shall bear any false or misleading marking, label, or other labeling and no statement, word, picture, design, or device which conveys any false impression or gives

[1] In this proposed rule, the Agency is using both terms ''preparation'' and ''processing'' for clarity and completeness. The term ''prepared'' is defined in the meat regulations as ''slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed'' (See 9 CFR 301.2). The term ''process'' is defined in the poultry regulations as ''a means to conduct any operation or combination of operations, whereby poultry is slaughtered, eviscerated, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed'' (See 9 CFR 381.1). The term ''processing'' is defined in the egg products regulations as ''manufacturing of egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing or drying, or packaging or repackaging egg products at official plants''(See 9 CFR 590.5).

[2] As discussed below, currently, when products imported into the U.S. are repackaged or otherwise reprocessed in a FSIS-inspected facility, they are deemed and treated as domestic product for labeling purposes. Therefore, such imported products would be subject to the proposed regulatory requirements.

[3] All federally inspected and passed products are eligible to receive export certification by FSIS if all FSIS and foreign country requirements listed in the FSIS Export Library have been met. Certain deviations from domestic product requirements or label policies are allowed, in accordance with 9 CFR 312.8, 322.1 through 322.5, 350.3(b), 362.2(b), 381.104 through 381.111, and 590.402.

[4] The FSIS-regulated products that are also COOL covered commodities are ground and muscle cuts of lamb, chicken and goat (7 CFR 65.135) and Siluriformes fish (7 CFR 60.106). COOL covered commodities meeting the regulatory definition of ''processed food item(s)'' are exempted from mandatory country of origin labeling (7 CFR 60.119 and 7 CFR 65.220).

[5] FSIS has similar authority under the AMA concerning products receiving voluntary inspection services, as the statute grants the Secretary authority to ''inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire, except that no person shall be required to use the service authorized by this subsection'' (7 U.S.C. 1622(h)(1)).

[6] On January 18, 2023, FSIS finalized a rule to allow generic approval of the labels of voluntarily-inspected products (88 FR 2798). In 2020, FSIS finalized a rule to allow generic approval for egg product labels (85 FR 68640, October 29, 2020; see 9 CFR 590.412).

any false indication of origin or quality or is otherwise false or misleading shall appear in any marking or other labeling (9 CFR 317.8(a)), 381.129(b), 590.411(f)(1)).[7]

As discussed below, and as explained in the FSIS Food Standards and Labeling Policy Book (''Food Standards and Labeling Policy Book''),[8] FSIS-regulated products that are derived from animals that may have been born, raised, and slaughtered in another country but are minimally processed in the United States may currently be labeled as ''Product of USA.'' The United States imports live animals, carcasses, and other products that are incorporated into U.S. preparation and marketing of meat products.

However, this policy may be causing false impressions about the origin of FSIS-regulated products in the U.S. marketplace. In July 2021, Secretary Vilsack announced that USDA would comprehensively review the current ''Product of USA'' labeling policy for products that FSIS regulates.[9] The review was intended to help the Agency determine what the ''Product of USA'' label means to consumers. To make sure that customers had access to accurate and clear labels, Executive Order 14036, *Promoting Competition in the American Economy* (86 FR 36987, July, 14, 2021) called for a rulemaking on voluntary ''Product of USA'' labeling for meat products.

A. Statutory and Regulatory Requirements for the Labeling of FSIS-Regulated Products

Labeling of Products Generally

As discussed above, under certain circumstances, FSIS regulations allow product labels that bear all required labeling features and comply with the Agency's labeling regulations to be ''generically approved'' (9 CFR 412.2(a)(1)). Labels that are generically approved may be used in commerce without prior submission to the Agency for approval. FSIS inspection program personnel (IPP) perform inspection tasks at establishments to verify that generically approved labels comply with labeling requirements.[10] Official establishments, therefore, do not need to submit generically approved labels to FSIS for evaluation. Current FSIS regulations allow all geographic and country of origin claims on labels of FSIS-regulated products, including ''Product of USA'' and similar U.S.-origin claims (9 CFR 412.2(b)), to be generically approved.

Labeling of Imported Products

FSIS' regulations require that the immediate container of imported meat, poultry, and eggs products to bear the name of the country of origin, preceded by the words ''Product of'' (9 CFR 327.14, 381.205, 590.950). If such imported products are intended to be sold at retail, the original packaging with the ''product of country'' labeling must remain with the product. However, if these products are repackaged or otherwise reprocessed in a federally inspected facility, they are currently deemed and treated as domestic product for both mandatory and voluntary labeling purposes.[11] Therefore, because such products are treated as domestic products for labeling purposes, under current FSIS labeling policy for U.S.-origin claims, they no longer are required to meet FSIS' mandatory origin labeling requirements for imported products (see Food Standards and Labeling Policy Book).

B. Current FSIS Policy on ''Product of USA'' and Similar Label Claims

The Food Standards and Labeling Policy Book provides guidance addressed to how manufacturers may prepare meat and poultry product labels that are truthful and not misleading. The Food Standards and Labeling Policy Book guidance for labeling products with ''Product of USA'' or similar claims currently states that labeling of a meat or poultry product may bear the phrase under one of two conditions, (1) if the country to which the product is exported requires this phrase, and the product is processed in the United States, or (2) the product is processed in the United States.[12] This U.S.-origin labeling guidance applies to ''Product of USA'' claims made with respect to multi-ingredient FSIS-regulated products, as well as single ingredient FSIS-regulated products. Thus, currently, a product may bear the ''Product of USA'' claim if the product is processed in the United States, or if the country to which the product is exported requires it and the product is processed in the United States.

In May 2003, a revision to the Food Standards and Labeling Policy Book cancelled an April 1985 FSIS policy memorandum that advised that a label of a FSIS product could include the ''Product of USA'' claim if it could be demonstrated that all ingredients having a bearing on consumer preference, such as meat, vegetables, fruits, and dairy products, were of domestic origin.

C. Petitions for Rulemaking

USDA has received three petitions from industry associations regarding the origin of meat products bearing the ''Product of USA'' label claim, each requesting that FSIS formally revise its Food Standards and Labeling Policy Book guidance for such claims.

Organization for Competitive Markets (OCM) and the American Grassfed Association (AGA) Petition

In June 2018, FSIS received a petition, submitted on behalf of OCM and AGA, requesting that FSIS amend the Food

[7] FSIS has similar authority under the AMA concerning products receiving voluntary inspection services, as the statute grants the Secretary authority to ''inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire, except that no person shall be required to use the service authorized by this subsection'' (7 U.S.C. 1622(h)(1)).

[8] Available at: *https://www.fsis.usda.gov/guidelines/2005-0003*.

[9] USDA Release No. 0151.21, ''USDA Announces Efforts to Promote Transparency in Product of the USA Labeling,'' available at: *https://www.usda.gov/media/press-releases/2021/07/01/usda-announces-efforts-promote-transparency-product-usa-labeling*.

In his announcement, Secretary Vilsack cited the U.S. Federal Trade Commission (FTC) final rule, thereafter published on July 14, 2021, related to ''Made in USA'' and other unqualified U.S.-origin claims on products sold in the United States (86 FR 37022). In the final rule preamble, the FTC noted FSIS' authority to regulate labels on meat products sold at retail pursuant to the FMIA, as well as the Agency's plans to initiate rulemaking to address potential marketplace confusion concerning products of purported U.S. origin.

[10] For example, under FSIS Directive 7221.1, Rev. 3 (January 31, 2023), IPP are directed to routinely include generic labels as part of the general labeling inspection tasks. These tasks, which include factual statement verification, take place approximately five to six times monthly in each inspected establishment or facility.

[11] In a 1989 final rule clarifying these provisions, FSIS stated that ''[o]nce product offered for entry has been reinspected by FSIS inspectors and the official mark of inspection has been applied, FSIS considers that such product has been 'entered' into the United State and, therefore, is the regulatory equivalent of domestic product.'' (54 FR 41045, October 5, 1989).

[12] The FSIS poultry regulations at 9 CFR 381.1 define ''process'' as ''a means to conduct any operation or combination of operations, whereby poultry is slaughtered, eviscerated, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.'' The FSIS meat regulations at 9 CFR 301.2 include ''processed'' in the definition of ''prepared'' (*i.e.,* ''slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.'') The FSIS egg products regulations at 9 CFR 590.5 define ''processing'' as the means of ''manufacturing of egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing or drying, or packaging or repackaging egg products at official plants.''

Standards and Labeling Policy Book to state that meat products may be labeled as ''Product of USA'' only if ingredients having a bearing on consumer preference, such as meat, vegetables, fruits, and dairy products, are of domestic origin.[13] The petition asserted that the Agency's current policy has resulted in labeling that is misleading to consumers because it allows imported meat that is reprocessed in the United States to be labeled as ''Product of USA.'' The petition further asserted that when imported meat products that have been further processed in an official U.S. establishment are labeled as ''Product of USA,'' consumers that prefer domestic meat cannot make an informed choice because the labeling disguises the true origin of the product. Finally, the petition asserted that the current policy also caused financial harm to U.S. family farmers and independent ranchers by giving an unfair market advantage to companies that further process imported meat.

FSIS received 2,593 public comments on the OCM/AGA petition.[14] A majority of the comments expressed support for the petition, stating that the use of ''Product of USA'' labeling should be limited to products from livestock that were born, raised, and slaughtered in the United States. Most were comments submitted by individual consumers, farmers, and ranchers, as well as trade associations representing these groups, labor unions, and animal welfare advocacy organizations. Several comments stated that the term ''Product of USA'' implies that the product was derived from livestock that were born, raised, and slaughtered in the United States and, therefore, is misleading when applied to imported products that have been further processed in an official U.S. establishment. Many of the comments stated that the current policy gives certain companies that import foreign grass-fed beef an unfair economic advantage.

Comments from other cattle producer trade associations, meat processor trade associations, Canadian and Mexican livestock producer trade associations, and the Canadian and Mexican governments did not support the petition. These comments stated that FSIS' ''Product of USA'' labeling policy has never been limited to livestock born, raised, and slaughtered in the United States. Comments from the Canadian and Mexican governments noted that the Canadian and U.S. livestock industries, and the Mexican and U.S. cattle industries, are highly integrated, and that both Canada and Mexico export a significant number of live cattle into the United States each year for feeding, slaughter, and processing. The comments expressed concerns about changes in labeling that could potentially disrupt these integrated livestock supply chains. No other foreign entities submitted comments.

On March 26, 2020, FSIS responded to the OCM/AGA petition, stating that the Agency had decided to initiate rulemaking to define the conditions under which the labeling of meat products would be permitted to bear voluntary claims that indicate that the product is of U.S. origin, such as ''Product of USA'' or ''Made in the USA.''[15] FSIS stated that, after considering the petition and the public comments received on the petition, the Agency concluded that its current labeling policy, which permits meat and poultry products that were derived from animals that may have been born, raised, and slaughtered in another country but processed in the United States to be labeled as ''Product of USA,'' may be causing confusion in the marketplace, particularly with respect to certain imported meat products, and that the Agency intended to propose that such labeling be limited to meat products derived from livestock that were slaughtered and processed in the United States.

United States Cattlemen's Association (USCA) Petition

In October 2019, USCA submitted a petition requesting that FSIS amend the Food Standards and Labeling Policy Book to provide that any beef product voluntarily-labeled as ''Made in the USA,'' ''Product of the USA,'' ''USA Beef'' or in any other manner that suggests that the origin is the United States, be derived from cattle that have been born, raised, and slaughtered in the United States.[16] As with the OCM/AGA petition, the USCA petition asserted that FSIS' current policy is misleading because it allows imported meat products processed in the United States to be labeled as ''Product of USA.'' The petition further asserted that consumers expect beef products labeled as ''Product of USA'' to be from cattle that were born, raised, and slaughtered in the United States. Finally, the petition referenced several studies that, according to the petition, demonstrated that U.S. consumers are interested in knowing the country of origin of beef products and are willing to pay a premium for meat from animals born, raised, and slaughtered in the United States.

FSIS received 111 public comments on the USCA petition.[17] A majority of the comments expressed support for the petition, stating that the use of ''Product of USA'' labeling should be limited to products from livestock that were born, raised, and slaughtered in the United States. Most were comments submitted by individual consumers, farmers, and ranchers, as well as trade associations representing these groups. Several comments stated that the term ''Product of USA'' implies that the product was derived from livestock that were born, raised, and slaughtered in the United States and, therefore, is misleading when applied to imported products that have been further processed in the United States. Comments from some cattle producer trade associations, meat processor trade associations, Canadian and Mexican livestock producer trade associations, and the Canadian and Mexican governments did not support the petition. Similar to the comments on the OCM/AGA petition, these comments stated that FSIS' ''Product of USA'' labeling policy has never been limited to livestock born, raised, and slaughtered in the United States. Comments from the Canadian and Mexican governments noted again that the Canadian and U.S. livestock industries, and the Mexican and U.S. cattle industries, are highly integrated, and that both Canada and Mexico export a significant number of live cattle into the United States each year for feeding, slaughter, and processing. The comments expressed concerns about measures that could potentially disrupt these integrated livestock supply chains. No other foreign entities submitted comments.

As with FSIS' response to the OCM/ACA petition, on March 26, 2020, FSIS responded to the USCA petition to state that the Agency had decided to initiate rulemaking to define the conditions under which the labeling of meat products would be permitted to bear

[13] FSIS Petition 18–05, Petition for Change to the FSIS Standards and Labeling Policy Book on ''Product of U.S.A.'' (June 12, 2018), available at: *https://www.fsis.usda.gov/federal-register/petitions/petition-change-fsis-standards-and-labeling-policy-book-product-usa.*

[14] Comments submitted on Petition 18–05 available at: *https://www.regulations.gov/document/FSIS-2018-0024-0001/comment.*

[15] Response to Petition 18–05 available at: *https://www.fsis.usda.gov/sites/default/files/media_file/2020-07/18-05-fsis-final-response-032620.pdf.*

[16] FSIS Petition 19–05, Petition for the Imposition of Beef Labeling Requirements to Address ''Made in USA'' Claims (October 23, 2019), available at: *https://www.fsis.usda.gov/federal-register/petitions/petition-imposition-beef-labeling-requirements-address-made-usa-claims.*

[17] Comments submitted on Petition 19–05 available at: *https://www.regulations.gov/document/FSIS-2019-0024-0001/comment.*

voluntary claims that indicate that the product is of U.S. origin, such as ''Product of USA'' or ''Made in the USA.'' [18] Also, similar to the response to the OCM/ACA petition, FSIS stated the Agency's conclusion that its current labeling policy may be causing confusion in the marketplace, particularly with respect to certain imported meat products, and that the Agency intended to propose that such labeling be limited to meat products derived from livestock that were slaughtered and processed in the United States.

National Cattlemen's Beef Association (NCBA) Petition

After FSIS considered and responded to the OCM/AGA and USCA petitions in March 2020, NCBA submitted a petition in June 2021 requesting that FSIS initiate rulemaking to amend the Agency's labeling regulations to eliminate the broadly applicable ''Product of USA'' label claim but to allow for other label claims.[19] Specifically, the petition requested that FSIS initiate rulemaking to amend its regulations to state that single ingredient beef products or ground beef may be labeled as ''Processed in the USA,'' provided that the label displays all mandatory features and is not otherwise false or misleading. Further, the petition requested that FSIS amend its regulations to state that other claims relating to U.S. origin, production, or processing of meat products are not eligible for generic approval. Similar to the AGA/OCM and USCA petitions, the NCBA petition generally asserted that the Agency's current policy on U.S.-origin labeling furthers consumer confusion as to whether products with U.S.-origin label claims are derived from animals born, raised, and slaughtered in the United States.

FSIS received 261 public comments on the NCBA petition.[20] Most comments did not support the petition, stating that replacing the current ''Product of USA'' labeling policy with a ''Processed in the USA'' label would not resolve the issue of consumer confusion about the origin of beef products. Many comments instead suggested that changing the definition of ''Product of USA'' to require that the beef product be derived from cattle born, raised, and slaughtered in the United States would better resolve consumer confusion. Other comments supported adding a specific ''born in the United States'' requirement to the Agency's current ''Product of USA'' labeling requirements for beef products. These comments were mostly submitted by individual consumers, ranchers, and those in communities supported by the cattle industry. Comments expressed concern about consumer choice and some stated an interest in supporting American cattle ranchers. Other comments submitted by trade associations and advocacy groups related to the cattle industry stated that a change to the definition of ''Product of USA'' would better address the issues raised in the petition. Additionally, the Canadian and Mexican governments each provided public comments that did not support the petition and focused on maintaining integrated livestock supply chains between the United States and their respective cattle markets. Each government specifically noted their interest in cooperation with any change to U.S. labeling practices as to avoid disruptions in the supply chain. No other foreign entities submitted comments.

The publication of this proposed rule serves as the Agency's response to the issues raised by all three related petitions.

D. Consumer Survey

To gather additional information as part of FSIS' comprehensive review of the current voluntary ''Product of USA'' label claim, on February 1, 2022, FSIS requested approval for a new information collection to conduct a consumer web-based survey on ''Product of USA'' labeling on beef and pork products (87 FR 5455). On June 13, 2022, the U.S. Office of Management and Budget (OMB) approved the survey, and on August 14, 2022, RTI International completed administration of the survey (''RTI survey''). The final report [21] and a copy of the survey itself can be found on FSIS' website at: *https://www.fsis.usda.gov/sites/default/files/media_file/documents/Product_of_USA_Consumer_Survey_Final_Report.pdf.*

The target population for the survey was the U.S. general population of adults (18 years or older) who speak English or Spanish, were primarily responsible for the grocery shopping in their household, and had purchased beef or pork in the last six months. The survey was administered over the web,[22] using a probability-based panel designed to be representative of the U.S. adult population and whose panel members were recruited using address-based sampling and weighting procedures to provide nationally representative estimates. The use of web-based data collection expedited the timeliness of data collection and allowed the study to reach a more diverse study population. Approximately 4,842 individuals took the survey, including 311 who completed the survey in the Spanish language.

The study used beef and pork products. In addition, the study considered high-cost beef products (*i.e.,* steak) and lower-cost beef products (*i.e.,* ground beef) to capture any potential differences in responses for higher- and lower-cost products.

The survey addressed three primary research questions: (1) Do consumers notice the ''Product of USA'' label claim?; (2) Do consumers understand the current ''Product of USA'' definition and other ''USDA'' labeling (*e.g.,* ''USDA Choice'') as it relates to country of origin?; and (3) How much are consumers willing to pay for meat products bearing the ''Product of USA'' label claim for the current definition and potential revised definitions (*e.g.,* if the meat were from an animal that was born, raised, slaughtered, and processed in the United States)?

To investigate the first question, respondents completed a limited time exposure (LTE) task to determine whether consumers notice the ''Product of USA'' label claim (*i.e.,* to indicate saliency). Respondents were randomly assigned to view one of four mock products and were exposed to a mock product for a limited time (20 seconds), then asked to list what labeling features they recalled (unaided), and then asked to answer a series of recognition questions to indicate whether they saw specific images and phrases, including the ''Product of USA'' claim (*i.e.,* aided recognition questions). Results from the LTE's unaided recall questions show that 9 to 31 percent of participants correctly recalled seeing the ''Product of USA'' claim. Results from aided recognition questions show that 70 to 80 percent of participants correctly recalled seeing the ''Product of USA'' claim. The range in responses was dependent on the format of the claim. Results from the aided recognition questions also show

[18] Response to Petition 19–05 available at: *https://www.fsis.usda.gov/sites/default/files/media_file/2021-04/19-05-fsis-final-response-032620.pdf.*

[19] FSIS Petition 21–02, Petition for Notice and Comment Rulemaking on ''Product of USA'' Labels (June 10, 2021), available at: *https://www.fsis.usda.gov/sites/default/files/media_file/2021-06/21-02-NCBA-06102021.pdf.*

[20] Comments submitted for Petition 21–02 available at: *https://www.regulations.gov/document/FSIS-2021-0018-0001/comment.*

[21] Cates, S. et al. 2022. Analyzing Consumers' Value of ''Product of USA'' Label Claims. Contract No. GS–00F–354CA. Order No. 123–A94–21F–0188. Prepared for Andrew Pugliese.

[22] Selected panelists without internet access were provided with free internet access and a tablet computer, if needed.

that participants correctly recalled seeing the ''Product of USA'' label claim more often than other claims mentioned in the survey (*i.e.,* ''no antibiotics and no added hormones,'' an image of the USDA mark of inspection, ''100% grass fed,'' ''sustainably raised,'' ''eco-friendly,'' an image of the USDA organic seal, and ''certified humane raised and handled'').

To investigate the second question, respondents answered questions that surveyed their understanding of the meaning of ''Product of USA'' label claim as it relates to product country of origin (*e.g.,* born, raised, slaughtered, and processed). The survey asked the question, ''To your knowledge, what does the 'Product of USA' label claim on meat products mean?'' Four options with various combinations of ''born,'' ''raised,'' ''slaughtered,'' and ''processed'' in the United States were presented to participants. Of the responses, 47 percent of participants believed that the label indicates that the animal was born, raised, slaughtered, and the meat then processed, in the United States. Only 16 percent of participants selected the current meaning of the label claim (*i.e.,* the meat was processed in the United States.)

To investigate the third question, respondents were asked questions to measure their intrinsic value or willingness to pay (WTP) for products bearing the ''Product of USA'' label claim for the current definition and potential revised definitions. This approach captures the strength of preference (*i.e.,* potential price premium) for changes in attributes. Specifically, this approach helps FSIS determine which U.S. preparation and processing steps, if any, are valued by the average consumer. The results suggest that participants were willing to pay more for a product derived from animals when all preparation and processing steps occurred in the United States—born, raised, slaughtered, and processed—than for product when fewer steps occurred in the United States. FSIS has interpreted these results to access the value the average consumer derives from different definitions of ''Product of USA.''

The combined survey results suggest that consumers value ''Product of USA'' label claims, as understood by consumers as indicating U.S. born, raised, slaughtered, and processed, but that the current FSIS ''Product of USA'' label claim is misleading to a majority of consumers as to the actual origin of FSIS-regulated products. Based on the survey results, adopting the proposed definition of the ''Product of USA'' claim to mean the product was derived from an animal born, raised, slaughtered, and processed in the United States would enhance consumer purchasing decisions, result in truthful, less misleading ''Product of USA'' labels, and decrease false impressions about the origin of FSIS-regulated products in the marketplace. In particular, it would allow consumers to better comparison shop between products based on the value that consumers place on products fully raised and processed in the United States. Further discussion of survey results can be found in the benefits section of the Economic Impact Analysis of the proposed rule in Section IV.

III. Proposed Rule

In consideration of the petitions, the public comments submitted in response to the petitions, and the results of the Agency's 2022 consumer survey, FSIS has concluded that adherence to the current ''Product of USA'' labeling policy guidance may be leading to misleading labeling and causing confusion in the marketplace. The evidence reviewed by FSIS demonstrates that the current FSIS ''Product of USA'' labeling guidance does not conform to consumers' conception of what ''Product of USA'' claims mean on FSIS-regulated products. Therefore, the Agency is proposing regulatory requirements for when the labeling of FSIS-regulated products may bear voluntary claims indicating that the product, or a component of the product's preparation and processing, is of U.S. origin to ensure such labels do not mislead or confuse consumers. If finalized, the proposed requirements could affect the labeling of products that currently claim to be of U.S. origin but are prepared and processed from imported products shipped to the United States. For example, meat products derived from live animals that are imported into the United States for feeding or for immediate slaughter would no longer be allowed to bear the authorized claims ''Product of USA'' or ''Made in the USA.'' Similarly, imported meat products reprocessed in the United States would no longer be allowed to bear the authorized claims ''Product of USA'' or ''Made in the USA'', as currently allowed under the Food Standards and Labeling Policy Book. The proposed requirements would not affect the labeling of products exported to foreign countries. However, these products could still bear a qualified origin label claim, as discussed below, if all FSIS requirements, and foreign country requirements listed in the FSIS Export Library, have been met.

FSIS is proposing to amend its labeling regulations at 9 CFR part 412, Label Approval. Under the proposed provisions, the two authorized claims ''Product of USA'' and ''Made in the USA'' may be displayed on labels of FSIS-regulated products only if the product is derived from animals born, raised, slaughtered, and processed in the United States. FSIS is also proposing that claims other than the two authorized claims ''Product of USA'' and ''Made in the USA'' may be displayed on labels to indicate the U.S.-origin component of a product's preparation and processing. All U.S.-origin label claims that are not authorized claims are known as ''qualified claims.'' Qualified claims would need to include a description on the package of how the product compares to the regulatory criteria for the two authorized claims, ''Product of USA'' and ''Made in the USA,'' including all preparation and processing steps that occurred in the United States upon which the claim is made. For example, ''Sliced and packaged in the United States using imported pork'' could be a U.S.-origin qualified claim. FSIS is proposing that companies using a voluntary claim of U.S. origin on labels of FSIS-regulated products must, as with the use of all origin claims, maintain documentation to demonstrate that the product complies with criteria of the proposed regulatory requirements.

Scope of Allowed Claims

FSIS is proposing to allow two authorized voluntary label claims to indicate that a FSIS-regulated product is of U.S. origin: ''Product of USA'' and ''Made in the USA.'' The Agency is proposing to allow the use of these two authorized claims only if the labeled FSIS-regulated product is derived from animals born, raised, slaughtered, and processed in the United States, or, in the case of a multi-ingredient product, if: (1) All FSIS-regulated components of the product are derived from animals born, raised, slaughtered, and processed in the United States; and (2) All additional ingredients of the product, other than spices and flavorings, are of domestic origin (*i.e.,* all preparation and processing steps of the ingredients are completed in the United States).

Label claims other than ''Product of USA'' or ''Made in the USA'' that indicate that a preparation and processing component of a FSIS-regulated product is of U.S. origin would be allowed (''qualified'' label claims), but such claims would need to

be positioned near a description on the package of how the product compares to the regulatory criteria for the two authorized claims, ''Product of USA'' and ''Made in the USA,'' including all preparation and processing steps that occurred in the United States upon which the claim is made. For example, a FSIS-regulated cured pork product package could include the qualified claim ''Sliced and packaged in the United States using imported pork.'' FSIS notes that in the case of the FSIS-regulated products that are also COOL covered commodities,[23] U.S.-origin label claims must comply with COOL requirements for the identification of country of origin, including production steps occurring in each country for commodities of multiple origins.[24]

FSIS requests comments on what criteria the Agency should establish for the use of qualified claims—claims that do not include ''Product of USA'' and ''Made in the USA''—to indicate that a preparation and processing component of a FSIS-regulated product is of U.S. origin.

U.S. State and Region Claims

Under the proposed rule, products labeled with voluntary authorized claims referring to the origin of a U.S. state or region (*e.g.,* ''Made in North Carolina'') would need to meet the proposed regulatory criteria for the two voluntary authorized claims ''Product of USA'' and ''Made in the USA'' (*i.e.,* born, raised, slaughtered, and processed in the state or region). Voluntary qualified claims referring to the state or region origin of a component of a FSIS-regulated product would need to include a description on the package of all preparation and processing steps that occurred in the state or region upon which the claim is made (*e.g.,* ''Packaged in Michigan.'') Currently, state and region claims may be generically approved for use on FSIS-regulated product labels if they are not misleading and they comply with the requirement under 9 CFR 317.8(b)(1) to properly identify the state in which the product was prepared on the product label. Should the proposed rule become final, FSIS will issue revised labeling guidance on the use of voluntary authorized and qualified state and region claims.

Generic Approval of U.S.-Origin Claims

Under the proposed rule, both the two authorized claims ''Product of USA'' and ''Made in the USA'' and qualified claims of U.S. origin would continue to be eligible for generic approval under 9 CFR 412.2(a)(1). As with all generically approved labels, labels bearing U.S.-origin claims would be subject to routine IPP inspection tasks to verify that the labels comply with the regulatory criteria.

Scope of Products: Single Ingredient and Multi-Ingredient

The proposed rule would apply to all products subject to FSIS mandatory inspection or eligible for voluntary inspection services provided by the Agency. FSIS has proposed criteria for both single and multi-ingredient products to ensure that the claim is consistent for all FSIS-regulated products that use the ''Product of USA'' or ''Made in the USA'' claims. Single ingredient products bearing the authorized label claims ''Product of USA'' or ''Made in the USA'' would need to be derived from animals born, raised, slaughtered, and processed in the United States. Multi-ingredient products would be allowed to bear the authorized label claims ''Product of USA'' or ''Made in the USA'' if: (1) All FSIS-regulated components of the product are derived from animals born, raised, slaughtered, and processed in the United States; and (2) All additional ingredients, other than spices and flavorings, are of domestic origin (*i.e.,* all preparation and processing steps of the ingredients are completed in the United States). This proposed requirement for multi-ingredient products would align with the April 1985 FSIS policy memorandum, discussed above, that ''Product of USA'' labeling of a product would be misleading unless all the product's ingredients having a bearing on consumer preference are of domestic origin.

FSIS requests comments on whether the Agency should adopt an alternative requirement for multi-ingredient products that bear the authorized claims ''Product of USA'' or ''Made in the USA.''

FSIS Labeling and AMS Mandatory COOL

As discussed above, this proposed rule concerning voluntary U.S.-origin labeling for FSIS-regulated products does not conflict with AMS COOL requirements. Further, the proposed rule would not alter or affect any other federal statute or regulation relating to country of origin labeling requirements. FSIS' current labeling regulations require that a country of origin statement on the label of any meat ''covered commodity'' as defined in 7 CFR part 65, subpart A, that is to be sold by a ''retailer,'' as defined in 7 CFR 65.240, must comply with the COOL requirements in 7 CFR 65.300 and 65.400.[25] Should this rule become final, any commodity that is subject to COOL mandatory country of origin labeling must continue to comply with those requirements.

Required Documentation To Support Claims

Official establishments and facilities choosing to use an authorized or qualified U.S.-origin claim on labels of FSIS-regulated products would need to maintain documentation to demonstrate that the product complies with criteria of the proposed regulatory requirements, and that the claim is not false or misleading, as the regulations require for the use of all generically approved labels (9 CFR 412.2(a)(1)). FSIS would accept existing documentation to demonstrate compliance with one or more of the proposed regulatory requirements. For example, an establishment or facility seeking to use a voluntary claim of U.S. origin may already maintain supplier sheets from the farm that raised a source animal as part of its labeling recordkeeping pursuant to existing FSIS regulations or participation in another federal program (*e.g.,* AMS COOL). An establishment or facility may maintain one or more of the following documentation types to support a claim that the product, or a component of the product, is of U.S. origin.

- Labels that bear the voluntary authorized claims ''Product of USA'' or ''Made in the USA'' under the proposed new regulatory 9 CFR 412.3(a) and (b) may have:
  - A written description of the controls used in the birthing, raising, slaughter, and processing of the source animals, and for multi-ingredient products the preparation and processing of all additional ingredients other than spices and flavorings, to ensure that each step complies with the proposed regulatory criteria;
  - A written description of the controls used to trace and segregate,

[23] The FSIS-regulated products that are also COOL covered commodities are ground and muscle cuts of lamb, chicken and goat (7 CFR 65.135) and Siluriformes fish (7 CFR 60.106). COOL covered commodities meeting the regulatory definition of ''processed food item(s)'' are exempted from mandatory country of origin labeling (7 CFR 60.119 and 7 CFR 65.220).

[24] 7 CFR 60.200 and 7 CFR 65.300.

[25] 9 CFR 317.8(b)(40). FSIS notes that the Agency's proposed regulatory requirements would concern voluntary label claims displayed on FSIS-regulated products, while COOL requires mandatory country of origin disclosure in the form of a placard, sign, label, sticker, band, twist tie, pin tag, or other format to consumers of covered commodities (See 7 CFR 60.300(a) and 65.400(a)).

from the time of birth or processing through packaging and wholesale or retail distribution, source animals, all additional ingredients other than spices and flavorings, and resulting products that comply with the proposed regulatory criteria from those that do not comply; or

○ A signed and dated document describing how the product is prepared and processed to support that the claim is not false or misleading.

• Labels that bear voluntary, qualified U.S.-origin claims under the proposed new regulatory 9 CFR 412.3(c) may have:

○ A written description of the controls used in each applicable preparation and processing step of source animals, all additional ingredients other than spices and flavorings, and resulting products to ensure that the U.S.-origin claim complies with the proposed regulatory criteria. The described controls may include those used to trace and segregate, during each applicable preparation or processing step, source animals, all additional ingredients other than spices and flavorings, and resulting products that comply with the U.S.-origin claim from those that do not comply; or

○ A signed and dated document describing how the qualified U.S.-origin claim regarding the source of the preparation and processing component is not false or misleading.

The proposed rule does not specify the types of documentation that must be maintained to demonstrate compliance with the proposed regulatory criteria (*e.g.,* bills of lading, shipping manifests, load sheets, grower records). Should the rule become final, FSIS would issue guidance, as needed, on recommended documentation to maintain compliance with U.S.-origin labeling requirements.[26] FSIS requests comments on whether the Agency should require, or provide guidance on, specific types of documentation that companies using a voluntary label claim of U.S. origin would need to maintain to demonstrate that the product complies with criteria of the proposed regulatory requirements. Further, FSIS requests comments on whether the Agency should allow or require third party certification for the use of authorized and qualified voluntary U.S.-origin label claims.

Compliance Date and Transition Period

Generally, FSIS uses a uniform compliance date for new labeling regulations.[27] Should the proposed rule become final, on the applicable compliance date, FSIS would consider as compliant only labels bearing the two authorized claims ''Product of USA'' and ''Made in the USA'' for FSIS-regulated products that comply with the proposed codified definition for this claim. Also on the applicable compliance date, FSIS would consider as compliant only labels bearing qualified claims of U.S. origin for FSIS-regulated products that comply with the proposed codified requirements for the use of such claims.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated an ''economically significant'' regulatory action by the Office of Information and Regulatory Affairs under section 3(f)(1) of E.O. 12866. Accordingly, the proposed rule has been reviewed by the Office of Management and Budget under E.O. 12866.

A. Economic Impact Analysis

Need for the Rule

Under current FSIS policy, products with a ''Product of USA'' or similar claim must, at a minimum, have been processed in the United States.[28] For instance, currently, the beef in a package of ground beef can come from the U.S., from another country or countries, or from both depending on where each step of the preparation of the beef takes place, and still bear the claim ''Product of USA'' even if the ground beef is merely processed in the United States. Similarly, currently, cattle born, raised, slaughtered, and processed in another country may be labeled ''Product of USA'' if the meat was merely further processed in the United States.

This policy may cause false impressions about the origin of FSIS-regulated products in the U.S. marketplace, potentially causing market failures. FSIS has received three petitions from industry associations, each requesting that USDA address this confusion by revising this policy.

The Agency received almost 3,000 public comments in response to these petitions, the majority of which supported altering this policy. FSIS also conducted a consumer web-based survey[29] to gather information on the American consumers' understanding of the meaning of the ''Product of USA'' claim. Based on the evidence reviewed by FSIS, FSIS has concluded that the current ''Product of USA'' labeling policy guidance may not reflect consumers' common understanding of what ''Product of USA'' claims mean on FSIS-regulated products. Therefore, the Agency is proposing regulatory requirements for when the labeling of FSIS-regulated products may bear voluntary claims indicating that the product, or a component of the product's preparation or processing, is of U.S. origin in order to ensure such labels do not mislead or confuse consumers as to the actual origin of FSIS-regulated products.

Baseline for Evaluation of Costs and Benefits

If finalized, the proposed changes may require businesses voluntarily using U.S.-origin claims on meat, poultry, and egg product labels to update their labels and conduct increased recordkeeping. FSIS requests comments on how such a change may impact an establishment's cost. FSIS used Label Insight[30] to estimate the number of single and multi-ingredient meat, poultry, and egg product retail labels and the number with an associated U.S.-origin claim.[31]

[26] For an example of current FSIS guidance on documentation typically needed to support label claims, see *Food Safety and Inspection Service Labeling Guideline on Documentation Needed to Substantiate Animal Raising Claims for Label Submission* (December 2019), available at: *https://www.fsis.usda.gov/guidelines/2019-0009.*

[27] See *FSIS Uniform Date for Food Labeling Regulations Final Rule* (69 FR 74405, December 14, 2004).

[28] U.S. Department of Agriculture, Food Safety and Inspection Service. Food Standards and Labeling Policy Book. 2005. *https://www.fsis.usda.gov/guidelines/2005-0003* (Accessed on January 31, 2023).

[29] Cates, S. et al. 2022. Analyzing Consumers' Value of ''Product of USA'' Labeling Claims. Contract No. GS–00F–354CA. Order No. 123–A94–21F–0188. Prepared for Andrew Pugliese.

[30] Label Insight, accessed July 2022. Label Insight is a market research firm that collects data on over 80 percent of food, pet, and personal care products in the U.S. retail market. Data are collected mostly from public web sources and company submissions. See *https://www.labelinsight.com/our-difference/* for more information.

[31] Based on FSIS' labeling expertise, foodservice labels of products sold to hotels, restaurants, and institutions generally do not have a U.S.-origin claim. Therefore, the cost analysis did not include foodservice labels.

This analysis identified two types of U.S.-origin claims: (1) Authorized claims, *e.g.,* ''Product of USA'' or ''Made in USA''; and (2) Qualified claims, *e.g.,* ''Raised and Slaughtered in the USA.'' Some of these labels with claims described above are also subject to COOL regulations regarding mandatory labeling depending on the commodity type.[32] To avoid double counting labels, packages with multiple U.S.-origin claims, *e.g.,* ''Product of USA'' on the back display and ''Born and Raised in America'' on the front display, were put into the ''Qualified'' category.

Based on Label Insight data, FSIS identified approximately 98,374 meat, poultry, and egg product retail labels. FSIS then searched the list of 98,374 labels and identified approximately 11,469 with a U.S.-origin type claim, or approximately 12 percent. To account for the possibility of over- or under-estimating the number of relevant labels, this analysis included a lower and upper bound by adjusting the mid-point label estimate minus or plus 10 percent, respectively. As such, FSIS estimates the number of meat, poultry, and egg product retail labels ranges from 88,537 to 108,211 labels and the number of labels with a U.S.-origin claim ranges from 10,322 to 12,616, table 1.[33]

TABLE 1—MEAT, POULTRY AND EGG PRODUCT LABELS [3]

	FSIS labels	U.S.-Origin claims		
		Authorized [1]	Qualified [2]	Total
Low bound	88,537	9,035	1,287	10,322
Mid-point	98,374	10,039	1,430	11,469
Upper bound	108,211	11,043	1,573	12,616

[1] Includes ''Product of USA'' or ''Made in USA.''
[2] Includes detailed U.S.-origin claims, such as ''Born and raised in USA'', and U.S. State and region claims.
[3] The lower and upper bound label estimates are minus or plus 10 percent of the mid-point label estimates.

Expected Costs of the Proposed Action

The proposed rule is expected to result in quantified industry relabeling, recordkeeping, and market testing costs, which combined are estimated to cost $3 million, annualized at a 7 percent discount rate over 10 years. Details of these cost estimates are provided below. There is the potential that this analysis has not captured all of the relevant costs associated with this proposed rule, such as costs from voluntary changes in production practices. The Agency is seeking comment on any such omitted costs.

Relabeling Costs

Under this proposed rule, FSIS-regulated single ingredient and multi-ingredient products that are not derived from animals born, raised, slaughtered, and processed in the United States would no longer be able to bear the authorized claims of ''Product of USA'' or ''Made in the USA.'' These products would have to be relabeled by either removing the authorized voluntary claim or using another claim, such as a qualified claim. For example, a FSIS-regulated cured meat product package from an animal not born and raised in the U.S. might replace an authorized claim of ''Product of USA'' with a qualified claim, ''Sliced and packaged in the United States using imported pork.'' Products with a qualified claim might also have to be relabeled to remove or modify the claim, depending on the facts and circumstances of the particular situation.

To estimate the costs associated with relabeling products that would no longer meet the proposed requirements for using their existing labels, this analysis utilized the 2014 Food and Drug Administration (FDA) Label Cost Model (FDA Label Cost Model) [34] and 2022 Label Insight data. The relabeling costs depend on the number of labels required to change, whether the change can be coordinated with a planned label update, and the type of label change (extensive, major, or minor).

As described in the Baseline for Evaluation of Costs and Benefits section, FSIS estimated the number of labels with a U.S.-origin claim. FSIS estimated that a portion of the labels with U.S.-origin claims would modify or remove the claim in response to this proposed rule as some labels already meet the proposed and current labeling criteria. However, it is difficult to estimate the number of claims that would change if the proposed rule is finalized, due to data limitations. To account for this uncertainty, FSIS chose a conservative and broad range, with low, mid, and upper bound estimates, to approximate the percentage of product labels that may be relabeled, table 2. The low, mid, and upper bound estimates were calculated by multiplying the low, mid, and upper bound estimated number of labels with a U.S.-origin claim by 25, 50, and 75 percent, respectively. FSIS requests comments on these assumptions, including whether the prevalence of label change would differ depending on whether existing label claims are Authorized or Qualified.

TABLE 2—NUMBER OF FSIS LABELS THAT WOULD BE RELABELED

Estimate	Labels with U.S.-origin claims	Count of labels with changes
Low bound	10,322	2,581
Mid-point	11,469	5,735

[32] As of 2016, the FSIS-regulated species and products which are covered commodities under the COOL regulations include muscle cuts of lamb, chicken, and goat; ground lamb, chicken, and goat; and wild and farmed Siluriformes fish.

[33] To find the meat, poultry, and egg product labels, we first queried the Label Insight data for labels that Label Insight identified as not being in FDA's jurisdiction. We also searched for the terms ''beef'', ''pork,'' and ''chicken'' in the database of labels that Label Insight identified as products under FDA jurisdiction and noted the labels that were in FSIS' jurisdiction. We also examined lamb, mutton, and goat labels but found the number of unique labels were de minimis compared to the number of labels found in the other commodity groups with larger domestic consumption. The label counts include multi- and single ingredient meat, poultry, and egg products.

[34] Muth, M., Bradley, S., Brophy, J., Capogrossi, K., Coglaiti, M., & Karns, S. (2015). *2014 FDA labeling cost model.* U.S. Food and Drug Administration.

TABLE 2—NUMBER OF FSIS LABELS THAT WOULD BE RELABELED—Continued

Estimate	Labels with U.S.-origin claims	Count of labels with changes
Upper bound	12,616	9,462

The number of label changes that can be coordinated with a planned change depends on the compliance time industry has to update labels after a final rule. FSIS anticipates the compliance period would be somewhere between 12 and 36 months. Assuming a 24-month compliance period, 100 percent of branded products label updates would be coordinated with a planned label change. However, for private (store brand) labels, only 26 percent would have a coordinated label change, and 74 percent would be uncoordinated.[35] This is because private labels change less frequently than branded labels. This analysis assumed approximately 25 percent of labels are private and 75 percent are branded.[36] Therefore, an estimated 81.5 percent of the labels requiring an update as a result of the rule would have a coordinated change and 18.5 percent would have an uncoordinated change.[37] Based on the FDA Label Cost Model, the label changes that would result from the rule are considered minor. We are asking for comment on whether some of these changes should be major label changes. The FDA Label Cost Model defines a minor label change as one where only one color is affected and the label does not need to be redesigned, such as changing an ingredient list or adding a toll-free number.[38]

TABLE 3—TOTAL NUMBER OF FSIS LABELS THAT WOULD BE RELABELED AND THE TYPE OF CHANGE

Estimate	Total labels [1]	Private	Branded	Minor coordinated	Minor uncoordinated
Low bound	2,581	645	1,936	2,103	477
Mid-point	5,735	1,434	4,301	4,673	1,061
Upper bound	9,462	2,365	7,097	7,712	1,750

[1] Totals may not sum due to rounding.

The estimates in the FDA Label Cost Model were updated to account for inflation using 2021 producer price indices for the material and consultation costs and 2021 wage rates [39] for the labor hours. The cost estimates in 2021 U.S. dollars are: $848 per label for a minor coordinated change (with a range of $205 to $1,797), and $4,829 per label for a minor uncoordinated change (with a range of $2,142 to $8,738). Combined, the mean estimated relabeling cost is $1.2 million, annualized at a 7 percent discount rate over 10 years, table 4.

TABLE 4—LABELING COSTS WITH A 24-MONTH COMPLIANCE PERIOD IN MILLIONS OF DOLLARS

	Type	Lower	Mean	Upper
Coordinated	Minor	$0.4	$4	$13.9
Uncoordinated	Minor	1.0	5.1	15.3
Total Cost∧[1]		1.5	9.1	29.2
Annualized Cost (3% DR, 10 Year)		0.2	1.0	3.3
Annualized Cost (7% DR, 10 Year)		0.2	1.2	3.9

[1] Totals may not sum due to rounding.

Recordkeeping Costs

Currently, businesses using labels to designate the U.S.-origin production or preparation component of a product must maintain records to support the U.S.-origin claim.[40] Currently, U.S.-origin claims are approved under a generic label approval system. Under the generic approval system, businesses that make products with a U.S.-origin claim are currently estimated to take 15 minutes on average to gather their records, 20 times per year.[41] FSIS estimated that the provisions in this proposed rule, if finalized, would require businesses to spend an additional 20 minutes to gather their

[35] Muth, M., Bradley, S., Brophy, J., Capogrossi, K., Coglaiti, M., & Karns, S. (2015). *2014 FDA Labeling Cost Model*. U.S. Food and Drug Administration. Table 3–1. Assumed Percentages of Changes to Branded and Private-Label UPCs that Cannot be Coordinated with a Planned Change.

[36] Based on private and branded label estimates for all FSIS labels in the FSIS' Proposed rule, ''Revision of Nutrition Facts Labels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed'', Published January 19, 2017. *https://www.regulations.gov/document/FSIS-2014-0024-0041.*

[37] For coordinated changes: (75% branded labels × 100% coordinated given 24-month compliance period) + (25% private labels × 26% coordinated given a 24-month compliance period) = 81.5% of FSIS labels can be coordinated with a planned change.

[38] Muth, M., Bradley, S., Brophy, J., Capogrossi, K., Coglaiti, M., & Karns, S. (2015). *2014 FDA Labeling Cost Model*. U.S. Food and Drug Administration. Page 2–9. A major change requires multiple color changes and label redesign, such as adding a facts panel or modifying the front of the package.

[39] Muth, M., Bradley, S., Brophy, J., Capogrossi, K., Coglaiti, M., & Karns, S. (2015). *2014 FDA Labeling Cost Model*. U.S. Food and Drug Administration. Table 4–7. Hourly Wage Rates for Activities Conducted in Changing Product Labels, 2014.

[40] Businesses with complicated supply lines are not expected to use an authorized claim.

[41] Generic proposed rule: 85 FR 56544, September 14, 2020.

records, 20 times per year, per respondent. FSIS acknowledges that it would take substantially more time to document some U.S. origin claims, such as description of preparation or processing steps, or for U.S.-origin claims on multi-ingredient products. In some cases, establishments could elect to either remove the U.S. origin claim from the label or make an alternative claim. FSIS requests comments on how such a change may impact an establishment's cost and benefits. Due to data limitations, FSIS used brand names associated with a U.S.-origin claim found in Label Insight data to estimate the number of businesses. FSIS estimated that approximately 1,575 brands or businesses have products with U.S.-origin claims and would have additional recordkeeping costs if the proposed rule were finalized. This analysis assumed this recordkeeping would be completed by an operations manager with an hourly estimated cost of $98.50 at the median and a range of wages from ($71.84 to $154.78).[42] As such, the estimated annual cost per business is approximately $656. The estimated annual cost to all 1,575 businesses is approximately $1 million, table 5.

TABLE 5—RECORDKEEPING ANNUAL COSTS IN MILLIONS OF DOLLARS

Businesses	Annual number of responses	Minutes per response	Lower	Mid	Upper
1,575	20	20	$0.8	$1.0	$1.6
Annualized Cost (3% DR, 10 Year)			0.8	1.0	1.6
Annualized Cost (7% DR, 10 Year)			0.8	1.0	1.6

Market Testing

To assess the marketability of potential label changes, the FDA Label Cost Model includes information on five types of market tests:[43] focus group, discrimination test, central location test, descriptive test, and in-home test. The mean cost for these market tests ranges from $7,211 to $36,570 per formula.[44] The FDA Label Cost Model reports that minor label changes are unlikely to incur any market testing costs.[45] However, if this proposed rule were to finalize, some businesses may still want to conduct market testing to assess how consumers would respond to a label change. FSIS estimates that 25 to 75 percent of businesses that have products with U.S.-origin claims would conduct a focus group test on one product formula. FSIS assumed that not every brand would conduct market testing because not every brand would make a change, and such testing is expensive. Additionally, the label changes are expected to be minor, and typically, brands do not conduct market research for minor changes. The estimated cost for a focus group test is $7,440 per formula (with a range of $7,048 to $7,831) in 2021 dollars.[46] Combined, the mean estimated market testing cost is $0.8 million, annualized at a 7 percent discount rate over 10 years, table 6. The Agency is seeking comment on the assumptions used for the market testing costs.

TABLE 6—MARKET TESTING COSTS IN MILLIONS OF DOLLARS

	Lower	Mean	Upper
Total Businesses with Market Testing	394	788	1,181
Total Cost [1]	$2.8	$5.9	$9.2
Annualized Cost (3% DR, 10 Year)	$0.3	$0.7	$1.0
Annualized Cost (7% DR, 10 Year)	$0.4	$0.8	$1.2

[1] Totals may not sum due to rounding.

Cost Summary

Under the provisions in this proposed rule, if finalized, industry would likely incur a one-time relabeling cost and annual recordkeeping costs. Combined and annualized assuming a 7 percent discount rate over 10 years, total industry cost is $3.0 million, table 7.

[42] The hourly cost includes a wage rate of $49.25 and a benefits and overhead factor of 2. Estimates obtained from the Bureau of Labor Statistics May 2021, National Industry-Specific Occupational Employment and Wage Estimates, for Management Occupations 50th (25th–75th percentile) (Occupational Code 11–0000), Management Occupations (*bls.gov*).

[43] Mean estimates from the 2014 FDA Label Cost Model were updated to 2021 dollars for inflation. Muth, M., Bradley, S., Brophy, J., Capogrossi, K., Coglaiti, M., & Karns, S. (2015). *2014 FDA Labeling Cost Model.* U.S. Food and Drug Administration. Page 4–43. Table 4–10. Estimated Market Testing Costs in the Labeling Cost Model, 2014 ($/Formula).

[44] Note, a single formula may be represented by more than one UPC because of multiple package sizes or types of packaging. Based Table 4–3 in the FDA Label Cost model, on average, there are approximately 1.17 UPCS per formula for food in NAICS categories 311612, 311615, and 311613.

[45] Muth, M., Bradley, S., Brophy, J., Capogrossi, K., Coglaiti, M., & Karns, S. (2015). *2014 FDA Labeling Cost Model.* U.S. Food and Drug Administration. Page 4–32. For minor labeling changes, ATC [analytical testing costs] and MTC [market testing costs] are likely to be 0.

[46] Muth, M., Bradley, S., Brophy, J., Capogrossi, K., Coglaiti, M., & Karns, S. (2015). *2014 FDA labeling cost model.* U.S. Food and Drug Administration. Page 4–43.

TABLE 7—TOTAL COSTS IN MILLIONS OF DOLLARS

Cost type	Lower	Mean	Upper
Relabeling	$1.5	$9.1	$29.2
Recordkeeping	0.8	1.0	1.6
Market Testing	2.8	5.9	9.2
Annualized Cost (3% DR, 10 Year)	1.3	2.7	5.9
Annualized Cost (7% DR, 10 Year)	1.4	3.0	6.7

Totals may not sum due to rounding.

Expected Benefit of the Proposed Rule

The RTI survey results suggest that the current ''Product of USA'' label claim is misleading to a majority of consumers, and consumers believe the ''Product of USA'' claim means the product was made from animals born, raised, and slaughtered, and the meat then processed, in the United States.

From the RTI survey, about 56 percent of survey participants answering the multiple choice question ''To your knowledge, what does the Product of USA label claim on meat products mean?'' thought a ''Product of USA'' claim meant the animal was at least raised and slaughtered and the meat then processed in the United States. Of these participants, 47 percent also believed that the ''Product of USA'' claim indicates that the animal must also be born in the United States, Table 8. Just 16 percent of participants selected the current FSIS policy definition, which only requires that the product be processed in the United States; the animals can be born, raised, and slaughtered in another country. Based on the survey results, the current FSIS ''Product of USA'' labeling guidance does not appear to provide consumers with accurate origin information. These findings suggests that the current ''Product of USA'' label claim is misleading to a majority of consumers. This proposed rule would adopt a requirement for the ''Product of USA'' claim that would convey more accurate U.S. origin information and thus reduce consumer confusion in the marketplace.

TABLE 8—PRODUCT OF USA LABEL CLAIM MEANING

Survey Question: To your knowledge, what does the Product of USA label claim on meat products mean?	Percent of responses
(A) Must be made from animals born, raised, and slaughtered and the meat then processed in the USA	47
(B) Must be made from animals raised and slaughtered and the meat then processed in the USA; the animals can be born in another country	9
(C) Must be made from animals slaughtered in the USA; the animals can be born and raised in another country	8
(D) Must be processed in the USA; the animals can be born, raised, and slaughtered in another country	16
(E) Not sure/don't know	21

Numbers may not sum due to rounding.

The results from the RTI survey also reveal that ''Product of USA'' claims are noticeable and important to consumers. Results from the survey's aided recognition questions show that 70 to 80 percent of eligible consumers correctly recalled seeing the ''Product of USA'' claim. Results from the aided recognition questions also showed that participants correctly recalled the ''Product of USA'' label claim more often than other claims. Results from the survey's unaided recall questions show that about 1 in 3 eligible consumers reported seeing a ''Product of USA'' claim when it was with a U.S. flag icon, while about 1 in 10 eligible consumers reported seeing a ''Product of USA'' claim when it was in plain text included in a list of other claims. These results suggest that consumers frequently notice the ''Product of USA'' label claim. Based on these results, FSIS assumes consumers are interested in ''Product of USA'' claims.

Finally, the RTI study also includes estimates of consumers' willingness to pay (WTP) for different U.S.-origin claims using two discrete choice experiments (DCEs). The first DCE asked survey respondents if they were willing to pay more for products with a ''Product of USA'' claim compared to the same product, but with no origin claim. The second DCE asked survey respondents if they were willing to pay different amounts for different definitions on the spectrum of born, raised, slaughtered, and processed in the United States. Each DCE had three product-subgroups: ground beef, NY strip steak, and pork tenderloin. The results from the first DCE show that consumers are willing to pay more for products with a ''Product of USA'' claim, in comparison to similar products without this claim, table 9. Specifically, results comparing products with a ''Product of USA'' claim to ones without such a claim reveal an increase in WTP per pound of $1.69 for ground beef; $1.71 for pork tenderloin; and $3.21 for NY strip steak, table 9. These results were found to be consistent across income groups.

The results from the second DCE show that in comparison to products that were processed in the United States, consumers have the highest marginal WTP for products that were born, raised, slaughtered, and processed in the United States, table 9. Specifically, results show a marginal WTP per pound of $1.15 for ground beef; $1.65 for pork tenderloin; and $3.67 for NY strip steak, for products that were born, raised, slaughtered, and processed in the United States, table 9.

TABLE 9—MARGINAL WTP FOR PRODUCT OF U.S.-ORIGIN CLAIMS, PER POUND

	Ground beef	Pork tenderloin	NY strip steak
DCE 1: *			
Product of USA	$1.69	$1.71	$3.21
DCE 2: **			
Slaughtered and Processed in the USA	0.30	0.50	1.24
Raised, Slaughtered, and Processed in the USA	0.86	1.24	2.86
Born, Raised, Slaughtered, and Processed in the USA	1.15	1.65	3.67

* Comparing products with a Product of USA claim versus products without this claim (when no definition was provided).
** Compared to product with a ''Processed in the USA'' claim.

Consumer WTP estimates, such as those obtained by the RTI survey, rely on stated preferences and may not reflect actual purchasing references in real life situations as the survey respondents do not have their own money on the line. To complement the survey study, FSIS also used a hedonic price model to estimate implicit price premiums of U.S.-origin claims on uniform-weight ground beef products. See Appendix A [47] for the detailed analysis on this hedonic price model. The hedonic price model compared a variable for origin claims linked to the U.S. only and a variable for multi-country origin claims linked to the U.S. plus other countries, to similar products without any U.S.-origin claims [48] on ground beef products. The model found a price premium of 2.5 percent or 10 cents per pound for claims exclusive to U.S. origin. The model found an even higher price premium of 4.2 percent or 16 cents per pound for multi-country origin claims referring to the U.S. and other countries. These implicit price premiums suggest consumers may currently pay more for ground beef products with origin information, including origin claims linked to the U.S. plus other countries, compared to products without any U.S. origin claims. Based on these results, the estimated price premium for a ground beef product with a U.S.-only origin claim would not decline if the origin claim is modified to include the U.S. and other countries. For context, it should be noted that the estimated price premiums were less than the premiums for other common marketing claims on ground beef products, such as organic, grass-fed, pasture raised, and no antibiotic and no hormone. These marketing claims yielded higher price premiums, ranging from $0.66 to $0.83 per pound, which could suggest that some producers may opt for these types of marketing claims rather than an origin claim. FSIS assumes this relationship holds across other FSIS regulated product types and is seeking comment on this assumption.

This data from the RTI survey and implicit price premium analysis suggests that a false or misleading ''Product of USA'' claim would economically harm consumers, who look to such labeling to convey accurate information about the U.S. origin of the production and preparation of the labeled product consistent with consumers' understanding of what that label means to them. Without more accurate labeling, consumers may be paying more for products that do not actually conform to their expectations, thus distorting the market.

Benefits Summary

The proposed ''Product of USA'' regulatory definitions of voluntary U.S.-origin claims align the meaning of those claims with consumers' understandings of the information conveyed by those claims, information that is valued by consumers. The proposed changes to the ''Product of USA'' voluntary labeling policy are intended to reduce false or misleading U.S. origin labeling (See 9 CFR 317.8(a)), 381.129(b), 590.411(f)(1)).[49] This would reduce the market failures associated with incorrect and imperfect information. The proposed changes would benefit consumers by matching the voluntary authorized ''Product of USA'' and ''Made in the USA'' label claims with the definition that consumers' likely expected, *i.e.,* as product being derived from animals born, raised, slaughtered, and processed in the United States.

The benefits for this proposed rule have not been quantified due to data, including the divergence between estimated values and what would be changed by the proposed rule, and the limitations (some of which are discussed in Appendix A) associated with the associated surveys, LTE experiments, DCEs, and hedonic price modeling. However, if finalized, the proposed changes would allow consumers to make informed purchasing decisions, resulting in an increase in consumer benefit and preventing market distortions. We request comments on the potential consumer and industry benefits of the proposed rule.

Alternative Regulatory Approaches

We considered the following three alternatives in the analysis for this proposed rule:

- *Alternative 1:* Taking no regulatory action by continuing with the existing labeling requirements.
- *Alternative 2:* The proposed rule.
- *Alternative 3:* The proposed rule, extended compliance period.

[47] A copy of Appendix A can be found on FSIS' website at: *https://www.fsis.usda.gov/sites/default/files/media_file/documents/Product_of_USA_Appendix.pdf.*

[48] Products without any U.S.-origin claims includes products with no country of origin claim or other country origin claim such as ''Product of Australia.''

[49] FSIS has similar authority under the AMA concerning products receiving voluntary inspection services, as the statute grants the Secretary authority to ''inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire, except that no person shall be required to use the service authorized by this subsection'' (21 U.S.C. 1622(h)(1)).

TABLE 10—COMPARISON OF THE CONSIDERED ALTERNATIVES

Alternative	Benefits	Cost
1—No Action	No benefit. Misinformation remains	No relabeling costs or increase in recordkeeping costs.
2—The Proposed Rule	More accurate information conveyed on labels with U.S-origin claims.	$3 million total costs. Relabeling cost $1.2 million. Recordkeeping cost $1.0 million. Market testing cost $0.8 million.
3—Extended Compliance Period.	Reduced benefits because labels with U.S.-origin claims would change at a slower rate and potentially include information that may mislead consumers for an extended period.	$2.5 million total costs. Relabeling cost $0.6 million. Recordkeeping cost $1.0 million. Market testing cost $0.8 million.

Note: Costs are in millions of dollars and annualized at the 7 percent discount rate over 10 years. Numbers may not sum due to rounding.

Alternative 1—Take No Regulatory Action (Baseline)

FSIS considered keeping the current regulations and taking no action. Consumers will be worse off absent the proposed action. While ''no action'' means the manufacturers currently labeling their products with U.S.-origin claims do not have to relabel or increase record-keeping activities, and therefore would not incur additional costs; the Agency would fail to address the false impression regarding U.S. origin conveyed by the current ''Product of USA'' labeling requirement. The current claim does not align with consumers' interpretations of what the ''Product of USA'' label claim means.

Therefore, the Agency rejects this alternative.

Alternative 2—The Proposed Rule

Under this proposed rule, the authorized claims, ''Product of USA'' and ''Made in the USA'', would only be permitted on the labels of FSIS-regulated products derived from animals born, raised, slaughtered, and processed in the United States. U.S.-origin label claims other than ''Product of USA'' or ''Made in the USA'' would need to include a description on the package of how the product compares to the regulatory ''Product of USA'' and ''Made in the USA'' definition, including all preparation and processing steps that occurred in the United States upon which the claim is made (as described above). Consumers would benefit from the proposed changes to the regulations to address the false impression and asymmetric information associated with current U.S.-origin claims.

This is the Agency's preferred alternative.

Alternative 3—The Proposed Rule, Extended Compliance Period

Alternative 3 would extend the compliance period to 42 months. This alternative reduces both costs and benefits. As shown in Table 11, assuming an extended compliance period of 42-months would provide industry sufficient time to coordinate all required label changes, subsequently reducing annualized relabeling costs by about $0.5 million, as compared to assuming a 24-month compliance period. Recordkeeping and market testing costs would remain the same as alternative 2.

However, during this 42-month period, there would be labels with U.S.-origin claims that conform to the current requirements as well as labels that conform to the proposed new requirements for an extended period. Having U.S.-origin labels that have different, with a mix of old and new, definitions in the marketplace for a prolonged period would increase consumer confusion and market failures. Benefits to consumers would be delayed as labels with U.S.-origin claims would change at a slower rate. Therefore, the Agency rejects this alternative.

TABLE 11—TOTAL COSTS 42-MONTH COMPLIANCE, IN MILLIONS

Cost type	Lower	Mean	Upper
Relabeling, One-time	$0.5	$4.9	$17.0
Recordkeeping, Recurring	0.8	1.0	1.6
Market Testing, One-time	2.8	5.9	9.2
Annualized Cost (3% DR, 10 Year)	1.1	2.3	4.6
Annualized Cost (7% DR, 10 Year)	1.2	2.5	5.1

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule, if finalized, would not have a significant economic impact on a substantial number of small entities in the U.S., as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).[50]

FSIS used brand names found in Label Insight data as a proxy for businesses. Although Label Insight does not have company or size information associated with the Universal Product Codes (UPCs), Label Insight does include brand names for labels. FSIS assumed brands with fewer than 50 UPCs associated with FSIS-regulated products were small businesses.

FSIS estimated that the proposed rule would impact 1,349 brands or small businesses. Combined, these 1,349 small businesses have roughly 4,000 labels with U.S.-origin claims. As described above, only a percentage of these labels may need to change as a result of the rule. FSIS requests comments on the

[50] Small Businesses are based on the United States Small Business Administration (SBA) size standards. The SBA defines a small business in NAICS code 311611—Animal (except Poultry) Slaughter and NAICS code 311612-Meat Processed from Carcasses as having less than 1,000 employees. A business in NAICS code 311615—Poultry Processing has a small business standard of less than 1,250 employees and NAICS code Seafood Product Preparation and Packaging has a less than 750-employee standard.

United States Small Business Administration (SBA), Table of Small Business Standards Matched to North American Industry Classification System Codes. Effective February 26, 2016. Available at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

number of small businesses affected and potential impact.

FSIS estimated that between 1,000 and 3,000 labels from small business may need changes if the proposed rule is finalized, assuming 25, 50, and 75 percent of labels would need to be changed. The average one-time cost estimate for minor label changes is between $848 and $4,829 per label. The expected one-time relabeling cost for 81.5 percent of labels are for minor coordinated changes and are approximately $848 per label. The expected one-time relabeling cost for 18.5 percent of labels are for minor uncoordinated changes, at approximately $4,829 per label.[51]

In addition, businesses would have increased recordkeeping costs. This analysis assumed this recordkeeping would be completed by an operations manager with an estimated hourly cost of $98.50 at the median and a range of wages from ($71.84 to $154.78) for 20 minutes, 20 times per year (please see recordkeeping section above for more information).[52]

Small businesses may also incur market testing costs. FSIS estimated that 674, with a range between 337 to 1,012, small businesses may conduct market testing if the proposed rule is finalized, assuming 25, 50, and 75 percent of the 1,349 small businesses conduct market testing. The expected mid-point one-time market testing costs for those small businesses that choose to conduct market testing is $7,440 in 2021 dollars.

The total mid-point cost estimate is $1.9 million, which is roughly $1,408 per small business ($1.9M/1,349 businesses), annualized over 10 years assuming a 7 percent discount rate. Table 12 provides a summary of the estimated total costs to small businesses.

TABLE 12—TOTAL SMALL BUSINESS COSTS, IN MILLIONS OF DOLLARS

Cost type	Lower	Mean	Upper
Relabeling, One-time	$0.6	$3.2	$9.2
Recordkeeping, Recurring	0.6	0.9	1.4
Market Testing, One-time	2.0	4.3	6.8
Annualized Cost (3% DR, 10 Year)	0.9	1.8	3.3
Annualized Cost (7% DR, 10 Year)	1.0	1.9	3.5

V. Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995, the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to OMB.

Title: Product of USA.

OMB Number: 0583–NEW.

Type of Request: Request for a new information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, and properly labeled and packaged.

FSIS is proposing to amend its regulations to define the conditions under which the labeling of FSIS-regulated products may bear voluntary claims indicating that the product is of United States origin. Under the recordkeeping requirements associated with generically approved labeling, records must be maintained to demonstrate compliance with proposed regulatory requirements for labels bearing U.S.-origin claims.[53]

At the final rule stage, FSIS intends to merge this information collection with the existing information collection titled *Marking, Labeling, and Packaging of Meat, Poultry, and Egg Products* (0583–0092). Under the recordkeeping requirements associated with generically approved labeling, FSIS estimates that it will take an additional 20 minutes to comply with ''Product of USA'' label recordkeeping requirements, 20 times annually. FSIS has made the following estimates based upon an information collection assessment:

Respondents: Official domestic establishments.

Estimated total number of respondents: 1,575.

Estimated annual number of responses per respondent: 20.

Estimated total annual burden on respondents: 10,500 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 937–4272.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of

[51] Mean estimates from the 2014 FDA Label Cost Model were updated to 2021 dollars for inflation. Muth, M., Bradley, S., Brophy, J., Capogrossi, K., Coglaiti, M., & Karns, S. (2015). *2014 FDA labeling cost model.* U.S. Food and Drug Administration.

[52] The hourly cost includes a wage rate of $49.25 and a benefits and overhead factor of 2. Estimates obtained from the Bureau of Labor Statistics May 2021, National Industry-Specific Occupational Employment and Wage Estimates, for Management Occupations 50th (25th–75th percentile) (Occupational Code 11–0000), Management Occupations (*bls.gov*).

[53] As discussed above (see Section III. Proposed Rule, Required Documentation to Support Claims), under the proposed rule, labels that bear the voluntary authorized claims ''Product of USA'' or ''Made in the USA'' may have: (1) A written description of the controls used in the birthing, raising, slaughter, and processing of the source animals, and for multi-ingredient products the preparation and processing of all additional ingredients other than spices and flavorings, to ensure that each step complies with the proposed regulatory criteria; (2) A written description of the controls used to trace and segregate source animals, all additional ingredients other than spices and flavorings, and resulting products that comply with the proposed regulatory criteria from those that do not comply; or (3) A signed and dated document describing how the product is prepared and processed to support that the claim is not false or misleading. Under the proposed rule, labels that bear voluntary qualified U.S.-origin claims may have: (1) A written description of the controls used in each applicable step of source animals, all additional ingredients other than spices and flavorings, and resulting products to ensure that the U.S.-origin claim complies with the proposed regulatory criteria; or (2) A signed and dated document describing how the qualified U.S.-origin claim regarding the source of the preparation and processing component is not false or misleading.

the method 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

VI. E-Government Act

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

VII. Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. Under this proposed rule: (1) All State and local laws and regulations that are inconsistent with this proposed rule will be preempted; (2) no retroactive effect will be given to this proposed rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this proposed rule.

VIII. Executive Order 13175

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

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

IX. USDA Non-Discrimination Statement

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

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

To file a program discrimination complaint, a complainant should complete a Form, AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/forms/electronic-forms,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or (2) Fax: (833) 256–1665 or (202) 690–7442; or (3) Email: *program.intake@usda.gov.*

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

X. Environmental Impact

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

FSIS has determined that this proposed rule, which would establish voluntary labeling requirements for FSIS-regulated products with ''Product of USA,'' ''Made in the USA,'' and similar claims, will not create any extraordinary circumstances that would result in this normally excluded action having a significant individual or cumulative effect on the human environment. Therefore, this action is appropriately subject to the categorical exclusion from the preparation of an environmental assessment or environmental impact statement provided under 7 CFR 1b.4(b)(6) of the U.S. Department of Agriculture regulations.

XI. Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

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

XII. Proposed Rule Text

List of Subjects in 9 CFR Part 412

Food labeling, Food packaging, Meat and meat products, Meat inspection, Poultry and poultry products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, FSIS is proposing to amend 9 CFR part 412 as follows:

PART 412—LABEL APPROVAL

■ 1. The authority citation for part 412 continues to read as follows:

Authority: 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

■ 2. Add § 412.3 to read as follows:

§ 412.3 Approval of U.S.-origin generic label claims.

(a) The authorized claims ''Product of USA'' and ''Made in the USA'' may be used under generic approval on labels to designate single ingredient products derived from animals born, raised, slaughtered, and processed in the United States.

(b) The authorized claims ''Product of USA'' and ''Made in the USA'' may be used under generic approval on labels to designate multi-ingredient products if all FSIS-regulated components of the product are derived from animals born, raised, slaughtered, and processed in the United States, and all other ingredients in the product are of domestic origin. For purposes of this paragraph (b), spices and flavorings need not be of domestic origin for claim use, but all other ingredients of the product must be of domestic origin.

(c) Claims other than ''Product of USA'' and ''Made in the USA'' may be used under generic approval on labels to designate the U.S.-origin component of single ingredient and multi-ingredient products only if the product also includes a description on the package as to how the claim compares to the definitions for the authorized claims, ''Product of USA'' and ''Made in the USA'' as set forth in paragraphs (a) and (b) of this section. The product must include a description on the package of all preparation and processing steps that occurred in the United States upon which the claim is being made. Such labels must be truthful and not misleading.

(1) The wording of the package description must be shown in print no smaller than one third the size of the largest letter in the U.S.-origin claim, and positioned near the U.S.-origin claim.

(d) In addition to the requirements in § 412.2, official establishments using and facilities choosing to use labels that bear the authorized claims ''Product of USA'' or ''Made in the USA'' to designate products of U.S. origin must maintain records to support the U.S.-origin claim. Examples of the types of documentation that may be maintained to support the authorized U.S.-origin claims ''Product of USA'' or ''Made in the USA'' include:

(1) A written description of the controls used in the birthing, raising, slaughter, and processing of the source animals, and for multi-ingredient products the preparation and processing of all additional ingredients other than spices and flavorings, to ensure that each step complies with paragraphs (a) and (b) of this section.

(2) A written description of the controls used to trace and segregate, from the time of birth or processing through packaging and wholesale or retail distribution, source animals, all additional ingredients other than spices and flavorings, and resulting products that comply with paragraphs (a) and (b) of this section from those that do not comply.

(3) A signed and dated document describing how the product is prepared and processed to support that the authorized claim is not false or misleading.

(e) In addition to the requirements in § 412.2, official establishments using and facilities choosing to use a qualified U.S.-origin label claim to designate the U.S.-origin preparation and processing component of a product must maintain records to support the qualified U.S.-origin claim. Examples of the types of documentation that may be maintained to support the qualified U.S.-origin claim include:

(1) A written description of the controls used in each applicable preparation and processing step of source animals, all additional ingredients other than spices and flavorings, and resulting products to demonstrate that the qualified U.S.-origin claim complies with paragraph (c) of this section. The described controls may include those used to trace and segregate, during each applicable step, source animals, all additional ingredients other than spices and flavorings, and resulting products that comply with the U.S.-origin claim from those that do not comply.

(2) A signed and dated document describing how the qualified U.S.-origin claim regarding the preparation and processing component is not false or misleading.

Done in Washington, DC.

Paul Kiecker,

Administrator.

[FR Doc. 2023–04815 Filed 3–10–23; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1240

RIN 2590–AB27

Enterprise Regulatory Capital Framework—Commingled Securities, Multifamily Government Subsidy, Derivatives, and Other Enhancements

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA or the Agency) is seeking comments on a notice of proposed rulemaking (proposed rule) that would amend several provisions in the Enterprise Regulatory Capital Framework (ERCF) for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac, and with Fannie Mae, each an Enterprise). The proposed rule would include modifications related to guarantees on commingled securities, multifamily mortgage exposures secured by government-subsidized properties, derivatives and cleared transactions, and credit scores, among other items.

DATES: Comments must be received on or before May 12, 2023.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AB27, by any one of the following methods:

- *Agency website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AB27.
- *Hand Delivered/Courier:* The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590–AB27, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

• *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590–AB27, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: Andrew Varrieur, Senior Associate Director, Office of Capital Policy, (202) 649–3141, *Andrew.Varrieur@fhfa.gov;* Christopher Vincent, Principal Financial Analyst, Office of Capital Policy, (202) 649–3685, *Christopher.Vincent@fhfa.gov;* or James Jordan, Associate General Counsel, Office of General Counsel, (202) 649–3075, *James.Jordan@fhfa.gov.* These are not toll-free numbers. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

Comments

FHFA invites comments on all aspects of the proposed rule. Copies of all comments will be posted without change and will include any personal information you provide, such as your name, address, email address, and telephone number, on the FHFA website at *https://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

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I. Introduction

FHFA is seeking comments on amendments to the ERCF that would enhance, clarify, or otherwise refine various regulatory capital requirements for the Enterprises. The proposed rule would modify provisions in the ERCF related to the following items: guarantees on commingled securities, multifamily mortgage exposures secured by properties with a government subsidy, derivatives and cleared transactions, credit scores for single-family mortgage exposures, guarantee assets, mortgage servicing assets (MSAs), time-based calls for credit risk transfer (CRT) exposures, interest-only (IO) mortgage-backed securities (MBS), the single-family countercyclical adjustment, the stability capital buffer, and the compliance date for the advanced approaches.

The proposed amendments would implement the lessons learned through the continued application of the ERCF and better reflect the risks inherent in the Enterprises' business models. In addition, the proposed rule would clarify certain areas of the ERCF. In doing so, the modifications in this proposed rule would enhance the safety and soundness of the Enterprises and contribute to the furtherance of the Enterprises' missions.

FHFA adopted the ERCF on December 17, 2020, with the purpose of implementing a going-concern regulatory capital standard to ensure that each of Fannie Mae and Freddie Mac operates in a safe and sound manner, and, across the economic cycle is positioned to fulfill its statutory mission to provide stability and ongoing assistance to the secondary mortgage market. The ERCF satisfied a statutory requirement that FHFA establish by regulation, risk-based capital requirements to safeguard the Enterprises against the risks that arise in the operation and management of their businesses. The ERCF also implemented a new leverage framework that included both a minimum requirement and a leverage buffer. The ERCF became effective on February 16, 2021. FHFA subsequently amended the ERCF three times. The amendments refined the prescribed leverage buffer amount (PLBA or leverage buffer) and the risk-based capital treatment of CRT, implemented a more comprehensive set of public disclosure requirements for the standardized approach, and required the Enterprises to submit capital plans to FHFA on an annual basis. Each of the amendments became effective in 2022.

Since the adoption of the ERCF, the Enterprises have been operating under the capital requirements and buffers outlined in the standardized approach while simultaneously building their capital positions. However, despite their recent progress accumulating capital, the Enterprises remain severely undercapitalized. Since the Enterprises were placed into conservatorships in September 2008, they have been supported by Senior Preferred Stock Purchase Agreements (PSPAs) between the U.S. Department of the Treasury (Treasury) and each Enterprise.[1]

As conservator and prudential regulator, FHFA continuously monitors the risk inherent in the Enterprises' business operations and reviews the appropriateness of the ERCF's capital requirements and buffers to mitigate those risks. FHFA has identified several provisions in the ERCF that could be revised to enhance the ERCF. Specifically, the proposed rule would introduce:

• A 5 percent risk weight and 50 percent credit conversion factor for guarantees on commingled securities,
• A risk multiplier of 0.6 for multifamily mortgage exposures secured by properties with certain government subsidies,
• A standardized approach for counterparty credit risk (SA–CCR) as the method for computing risk weights for derivatives and cleared transactions,
• A modified procedure for determining a representative credit score for single-family mortgage exposures,
• A modified credit score assumption for single-family mortgage exposures originated without a representative credit score,
• A 20 percent risk weight for guarantee assets, and
• A timing alignment between the application of single-family countercyclical adjustments and property value adjustments.

FHFA has also identified several aspects of the ERCF where specific language would clarify and enhance the usefulness of the ERCF. The proposed rule would:

• Expand the definition of MSAs to include servicing rights on mortgage loans owned by the Enterprise,
• Explicitly permit eligible time-based call options in the CRT operational criteria,
• Amend the risk weights for IO MBS to 0 percent, 20 percent, and 100

[1] Fannie Mae's and Freddie Mac's Amended and Restated Senior Preferred Stock Purchase Agreements with Treasury, as amended through September 14, 2021, can be found on FHFA's web page at *https://www.fhfa.gov/Conservatorship/Pages/Senior-Preferred-Stock-Purchase-Agreements.aspx.*

percent, conditional on whether the security was issued by the Enterprise, the other Enterprise, or a non-Enterprise entity, respectively, and

• Clarify the calculation of the stability capital buffer when an increase and a decrease might be applied concurrently.

Finally, the proposed rule would extend the compliance date for the advanced approaches. Each item is discussed below.

II. Proposed Requirements

A. Guarantees on Commingled Securities

The ERCF includes risk-based, leverage, and buffer capital requirements for guarantees on commingled securities—certain resecuritizations guaranteed by a combination of Fannie Mae and Freddie Mac, described more fully below. For risk-based capital, an Enterprise is currently required to apply a 20 percent risk weight on exposures to the other Enterprise in a commingled security. For leverage capital and buffer calculations, an Enterprise is currently required to apply a 100 percent credit conversion factor to these exposures because they are off-balance sheet guarantees. The 20 percent risk weight and 100 percent credit conversion factor for guarantees on commingled securities may not accurately reflect the counterparty risks posed by commingling activities and in certain circumstances may impair the liquidity of the Enterprises' securities, which may adversely affect the nation's housing finance market. The proposed rule would reduce the risk weight and the credit conversion factor for guarantees on commingled securities to 5 percent and 50 percent, respectively.

On February 28, 2019, FHFA issued a final rule on common MBS known as the Uniform Mortgage-Backed Security (UMBS) with the purpose of enhancing liquidity in the MBS marketplace and fostering the efficiency and liquidity of the secondary mortgage market. On June 3, 2019, the Enterprises launched newly issued UMBS. The UMBS are a single-class security issued by either Fannie Mae or Freddie Mac backed by single-family mortgage loans purchased by the issuing Enterprise. For the UMBS market to operate successfully, market participants must continue to accept UMBS as fungible irrespective of the issuing Enterprise. That is, investors generally must agree that a UMBS of a certain coupon, maturity, and loan origination year issued by one Enterprise is roughly equivalent to the corresponding UMBS issued by the other Enterprise.[2]

To foster fungibility, each Enterprise may issue ''Supers,'' which are single-class resecuritizations of UMBS. The securities underlying Supers may be commingled, *i.e.,* Supers may be backed by both securities that are issued and guaranteed by Fannie Mae and securities that are issued and guaranteed by Freddie Mac. The Enterprises may also issue collateralized mortgage obligations, or CMOs, and real estate mortgage investment conduits, or REMICs, which are each a type of structured security in which the collateral can include UMBS. If an Enterprise guarantees a security backed in whole or in part by securities of the other Enterprise, the Enterprise is obligated under its guarantee to fund any shortfall in the event that the other Enterprise fails to make a payment due on its securities.[3] Investors in commingled securities benefit from the original guarantees extended by guarantors of the underlying collateral, as well as the additional guarantees of resecuritizing Enterprise, including on the commingled collateral.

As a result of these multiple guarantees, the current 20 percent risk weight and 100 percent credit conversion factor for commingled securities may not accurately reflect these counterparty risks and, in certain circumstances, may impair the liquidity of the Enterprises' securities. However, despite their current Treasury support under the PSPAs, the Enterprises also remain privately-owned corporations, and their obligations do not have the explicit guarantee of the full faith and credit of the United States. Therefore, the MBS and other obligations of an Enterprise pose some degree of counterparty risk.

The proposed rule would reduce the risk weight for guarantees on commingled securities from 20 percent to 5 percent to better align the capital requirements with the inherent counterparty risk. A lower risk weight should reduce an Enterprise's incentive to only guarantee Supers securities collateralized by its own UMBS, leading to different volumes and investor perceptions of UMBS issued by each Enterprise, and potentially leading to a bifurcation of UMBS pricing and trading. Several commenters on FHFA's 2020 notice of proposed rulemaking on Enterprise capital[4] recommended FHFA implement a similar treatment, while also stating that an Enterprise's exposures to the other Enterprise do not increase aggregate credit risk and the 20 percent risk weight is therefore excessive.

The risk-weight floor assigned to any retained CRT exposure is 5 percent.[5] This risk weight applies to senior tranches of CRT transactions that absorb catastrophic levels of loss only after resources to absorb expected and unexpected losses are exhausted. Similarly, the losses that an Enterprise would experience from commingled securities would likely occur in remote circumstances through sustained catastrophic levels of loss after the other Enterprise has exhausted its loss-absorbing financial resources. Therefore, the proposed 5 percent risk weight for credit exposures arising out of guarantees on commingling activities would align with the risk-weight floor for retained CRT exposures.

The proposed rule would also reduce the credit conversion factor for guarantees on commingled securities from 100 percent to 50 percent. To enhance the liquidity of UMBS and the overall stability of the secondary mortgage market, the leverage and buffer requirements for guarantees on commingled securities would also need to be updated. FHFA proposes to accomplish this by reducing the impact of these guarantees on an Enterprise's adjusted total assets. According to generally accepted accounting principles, an Enterprise's guarantee of commingled collateral is not consolidated on the balance sheet because the Enterprise issuing the guarantee does not have any rights or powers to direct the activities of the underlying commingled resecuritization trust and is not the primary beneficiary of its activities.[6] Under the ERCF, off-balance sheet assets are subject to a range of credit conversion factors to determine adjusted total assets. FHFA's proposal to update the credit conversion factor for guarantees on commingled securities to 50 percent would align with the prevailing regulatory capital treatment for off-balance sheet undrawn commitments with an original maturity of more than one year that are not

[2] To support investor confidence in that fungibility, FHFA adopted a final rule governing Enterprise actions affecting UMBS cash flows to investors (12 CFR part 1248), publishes quarterly prepayment monitoring reports, and limits certain pooling practices with respect to the creation of UMBS.

[3] The Enterprises have entered into an indemnification agreement relating to commingled securities issued by the Enterprises. The indemnification agreement obligates each Enterprise to reimburse the other for any such shortfall.

[4] 85 FR 39274 (June 30, 2020).

[5] 87 FR 14764 (March 16, 2022).

[6] FASB ASC 810.

unconditionally cancelable by the Enterprise.

The proposed changes to the requirements for guarantees on commingled securities would affect both risk-weighted assets and adjusted total assets. FHFA estimates that under the proposed rule, the total common equity tier 1 capital (CET1) required to meet the risk-based capital requirements and buffers for the Enterprises' guarantees on commingled securities as of June 30, 2022 would decline by approximately $5.1 billion.

Question 1: What, if any, other factors should FHFA consider in its determination of a 5 percent risk weight and 50 percent credit conversion factor for guarantees on commingled securities?

Question 2: Is the proposed 5 percent risk weight for guarantees on commingled securities appropriately calibrated?

Question 3: Is the proposed 50 percent credit conversion factor for guarantees on commingled securities appropriately calibrated?

Question 4: Should FHFA adjust the regulatory capital treatment for exposures to MBS guaranteed by the other Enterprise to mitigate any risk of disruption to the UMBS?

Question 5: Should FHFA consider a different risk weight for second-level resecuritizations backed by UMBS?

Question 6: What should be the regulatory capital treatment of any credit risk mitigation effect of any indemnification or similar arrangements between the Enterprises relating to UMBS resecuritizations?

Question 7: Should FHFA adopt different risk weights for MBS guaranteed by an Enterprise and the unsecured debt of an Enterprise?

B. Multifamily Government Subsidy Risk Multiplier

The methodology for calculating multifamily credit risk weights in the ERCF does not differentiate between multifamily mortgage exposures secured by properties with a government subsidy and by properties without a government subsidy. Two previous FHFA products that together formed much of the basis for the ERCF—the Conservatorship Capital Framework, an internal risk measurement framework established in 2017, and FHFA's 2018 notice of proposed rulemaking on Enterprise Capital Requirements [7]—each contained such a differentiation in the form of a multifamily risk multiplier. FHFA did not include such a multiplier in the ERCF due to calibration challenges caused by the relatively infrequent instances of loss across multifamily loan programs that include a government subsidy. However, several commenters on FHFA's 2020 notice of proposed rulemaking on Enterprise capital [8] recommended that FHFA introduce a risk multiplier to reflect that multifamily mortgage exposures associated with government-subsidized properties are less risky than those associated with unsubsidized properties, all else equal.

Properties with government subsidies represent an important segment of the Enterprises' multifamily business models. FHFA sets a yearly limit or cap on the dollar value of the Enterprises' multifamily acquisitions, ensuring they provide liquidity to the secondary market without crowding out private competition. As part of the annual acquisition limits, FHFA directs the Enterprises to meet specific affordable housing or mission goals by acquiring multifamily loans collateralized by properties that charge rents affordable to certain segments of the population with specified income levels. Affordable property units are available to renters at a rental rate below the typical market rate, leading to generally strong demand for affordable property units and therefore to relatively stable vacancy rates.

Government subsidies of affordable housing are issued either at the Federal or state and local levels, typically in the form of a tax credit, direct subsidy, or voucher reimbursement. The purpose of these subsidies is to compensate property owners for providing below-market rental rates on units within their multifamily properties. Many subsidies last for multiple years and remain in place only if the property owner meets certain program-specific requirements. Although government-subsidized properties typically collect lower gross rents per unit than comparable non-affordable properties and may generate lower net operating income (NOI), property owners compensate for the lower property income through the value of the government-subsidies. Thus, property owners have an incentive to ensure the property follows the contractual subsidy restrictions, including avoiding potential default (60 or more days past due), to retain the government subsidy. The primary subsidy programs include the Low-Income Housing Tax Credit (LIHTC) program,[9] Section 8 Housing Assistance Payment contracts, and diverse state- and local-level programs.

Many government subsidy programs require property owners to make a specified percentage of units affordable to residents at or below a certain percent of area median income (AMI). For example, to qualify for the LIHTC program, a property owner must (in general) make at least 20 percent of the units available to renters at or below 50 percent of AMI, make at least 40 percent of the units available to renters at or below 60 percent of AMI, or make at least 40 percent of the units available to renters with an average income of no more than 60 percent of AMI and no units to renters with an income greater than 80 percent of AMI. In practice, the number of units restricted as affordable at a multifamily property often significantly exceeds the applicable minimum program requirements because the penalties for non-compliance can be quite costly. Minimum affordability criteria aim to ensure that the primary benefits of government subsidy programs accrue to low-income renters rather than to property owners acting in bad faith.

The proposed rule would introduce a risk multiplier equal to 0.6 for any multifamily mortgage exposures secured by one or more properties each with at least one applicable government subsidy, subject to certain affordability criteria. The applicable government subsidies would be limited to the following three primary subsidy programs: (i) LIHTC, (ii) Section 8 project-based rental assistance, and (iii) state and local affordable housing programs that require the provision of affordable housing for the life of the loan. A multifamily mortgage exposure meeting the collateral criteria would qualify for the 0.6 risk multiplier if the Enterprise can verify that each property securing the exposure has at least 20 percent of its units restricted as affordable units, where the affordability restriction means less than or equal to 80 percent of AMI.

For a multifamily mortgage exposure to qualify for the government subsidy multiplier, the properties securing the exposure must have significant, long-term, and continuous government subsidies. LIHTC and project-based Section 8 programs meet these criteria, so to ensure alignment in this regard, the proposed rule would require that qualifying state and local affordable housing programs require affordable

[7] 83 FR 33312 (July 17, 2018).

[8] 85 FR 39274.

[9] Section 42 of the Internal Revenue Code (26 U.S.C.A. section 42); 26 CFR 1.42 (Treasury regulations); each state agency's qualified allocation plan, regulations and compliance manual, along with a list of state and local LIHTC-allocating agencies, can be found at *https://www.huduser.gov/portal/datasets/lihtc.html.*

housing to be provided for the life of the loan.

The addition of a government subsidy multiplier would affect risk-weighted assets, only. FHFA estimates that under the proposed rule, required CET1 capital for the Enterprises' multifamily mortgage exposures as of June 30, 2022 would decline by approximately $0.4 billion.

Question 8: Is the 0.6 risk multiplier for multifamily mortgage exposures secured by properties with a government subsidy appropriately calibrated?

Question 9: Is the restriction that at least 20 percent of units must be made available at or below 80 percent of AMI appropriately calibrated?

Question 10: Should FHFA consider additional thresholds and/or affordability restrictions for a multifamily mortgage exposure to qualify for a risk multiplier greater than 0.6 but less than 1.0?

Question 11: Do FHFA's proposed categories of applicable government subsidies appropriately capture the population of multifamily government subsidies that are significant, long-term, and continuous?

Question 12: Are there data or analyses available that would support a multi-tiered government subsidy risk multiplier that varies with the level of subsidy or by other relevant factors? If so, what data and factors?

C. Derivatives and Cleared Transactions

An Enterprise with a positive exposure on a derivative contract expects to receive a payment from its counterparty and is subject to the credit risk that the counterparty will default on its obligations and fail to pay the amount owed under the contract. Therefore, the ERCF requires an Enterprise to hold risk-based capital based on the exposure amount of its derivative contracts.

The current rule requires an Enterprise to use the current exposure methodology (CEM) to determine the exposure amount of each derivative contract. The risk-weighted asset amount for the derivative contract is then the product of the exposure amount and the risk weight of the counterparty. The ERCF requires an Enterprise to use CEM to determine the exposure amounts of their over-the-counter (OTC) derivative contacts and cleared derivative contracts, as well as determine the risk-weighted assets amount of their contributions of commitments to mutualized loss sharing agreements with central counterparties (*i.e.,* default fund contributions).

Under CEM, the exposure amount of a single derivative contract is equal to the sum of its current credit exposure and potential future exposure (PFE). Current credit exposure is equal to the greater of zero and the on-balance sheet fair value of the derivative contract. PFE approximates the Enterprise's potential exposure to its counterparty over the remaining maturity of the derivative contract. PFE equals the product of the notional amount of the derivative contract and a supervisory-provided conversion factor, which reflects the potential volatility in the reference asset of the derivative contract. The ERCF provides the conversion factors in a look-up table that is based on the derivative contract's type and remaining maturity. The potential exposure generally increases with an increase in volatility and the duration of the derivative contract.

CEM was developed before the financial crisis and does not reflect recent market conventions and regulatory requirements that are designed to reduce the risks associated with derivative contracts. This can lead to a significant mismatch between the risks of derivative portfolios and the regulatory capital that the Enterprises must hold against them. Examples of CEM drawbacks include a lack of differentiation between margined and unmargined derivative contracts and inadequate recognition of the risk-reducing benefits of a balanced derivatives portfolio. Furthermore, the supervisory conversion factors provided under CEM were developed prior to the 2007–2008 financial crisis and they have not been recalibrated to reflect the stress volatilities observed in recent years.

For these reasons, the Basel Committee on Banking Supervision (Basel Committee) developed the SA–CCR and published it as a final standard in 2014.[10] The U.S. banking regulators adopted SA–CCR as a replacement for CEM in 2020.

SA–CCR provides important improvements to risk sensitivity and calibration relative to CEM, including differentiation of margin and non-margin trades and recognition of netting agreements, resulting in more appropriate capital requirements for derivative contracts. One of the concerns regarding the current regulatory capital treatment for derivative contracts under CEM is that CEM does not appropriately recognize collateral, including the risk-reducing nature of variation margin, and does not provide sufficient netting for derivative contracts that share similar risk factors. The SA–CCR methodology addresses these concerns.

Compared to CEM, SA–CCR offers a more risk-sensitive approach to determine the replacement cost and PFE for a derivative contract. Specifically, SA–CCR improves collateral recognition by differentiating between margined and unmargined derivative contracts. SA–CCR also better captures recently observed stress volatilities among the primary risk drivers for derivative contracts. SA–CCR is a standardized, non-modelled approach that is relatively straightforward to implement.

The proposed rule would require an Enterprise to calculate the exposure amounts of OTC and cleared derivative contracts using SA–CCR rather than CEM, as well as the risk-weighted asset amounts of default fund contributions. The Enterprises would also be required to use SA–CCR to determine the exposure amount of their derivative contracts for inclusion in adjusted total assets. Use of SA–CCR would allow an Enterprise to recognize the meaningful, risk-reducing relationship between derivative contracts within a balanced derivatives portfolio and to recognize the risk-mitigation effects of guarantees, credit derivatives, and collateral for purposes of its risk-based capital requirements. In addition, the replacement of CEM with SA–CCR would result in better alignment between the ERCF and both the U.S. banking framework and the international standards issued by the Basel Committee.[11]

Under the proposed rule and consistent with the U.S. banking framework, the Enterprises would apply SA–CCR in the following ways:

1. Netting Sets

Under SA–CCR, an Enterprise would calculate the exposure amount of its derivative contract at the netting set level. The proposed rule would define a netting set to mean either one derivative contract between an Enterprise and a single counterparty, or a group of derivative contracts between an Enterprise and a single counterparty that are subject to a qualifying master netting agreement (QMNA). The proposed rule would retain the current definition of a QMNA.

2. Hedging Sets

For the PFE calculation under SA–CCR, an Enterprise would fully or partially net derivative contracts within

[10] *https://www.bis.org/publ/bcbs279.pdf.*

[11] To note one point of departure, the proposed rule would not include the internal models methodology from 12 CFR 217.132(d) to reduce reliance on internal models.

the same netting set that share similar risk factors. This approach would recognize that derivative contracts with similar risk factors share economically meaningful relationships with close correlations that make netting appropriate. In contrast, CEM recognizes only a portion of the netting benefits of derivative contracts subject to a QMNA, without accounting for relationships between the underlying risk factors of derivative contracts.

Under SA–CCR, a hedging set means those derivative contracts within the same netting set that share similar risk factors. The proposal would define five types of hedging sets—interest rate, exchange rate, credit, equity, and commodities—and would provide formulas for netting within each hedging set. Each formula would be particular to each hedging set type and would reflect the regulatory correlation assumptions between risk factors in the hedging set.

3. Derivative Contract Amount for the PFE Component Calculation

Similar to CEM, an Enterprise would use an adjusted derivative contract amount for the PFE component calculation under SA–CCR. However, as part of the estimate, SA–CCR would use updated supervisory factors that reflect the stress volatilities observed during the financial crisis. The supervisory factors would reflect the variability of the primary risk factors of the derivative contract over a one-year time horizon. In addition, SA–CCR would apply a separate maturity factor to each derivative contract that would scale down, if necessary, the default one-year risk horizon of the supervisory factor to the risk horizon appropriate for the derivative contract.

4. Collateral Recognition and Differentiation Between Margined and Unmargined Derivative Contracts

Under CEM, an Enterprise recognizes the collateral only after the exposure amount has been determined. Under the proposed rule, SA–CCR would account for collateral directly within the exposure amount calculation. For replacement cost, the proposed rule would recognize collateral on a one-for-one basis. For PFE, SA–CCR would use the concept of a PFE multiplier, which would allow an Enterprise to reduce the PFE amount through recognition of over-collateralization, in the form of both variation margin and independent collateral. It would also account for negative fair value amounts of the derivative contracts within the netting set. In addition, the proposed rule would differentiate between margined and unmargined derivative contracts, such that the netting set subject to variation margin would always have an exposure amount no higher than an equivalent netting set that is not subject to a variation margin agreement.

To accommodate the introduction of the SA–CCR into the ERCF's standardized approach, the proposed rule would make a series of corresponding modifications, including adding appropriate defined terms to ERCF's definitions and updating the calculation of total risk-weighted assets. Notably, the proposed rule would replace the current requirements for cleared transactions (12 CFR 1240.37) and collateralized transactions (12 CFR 1240.39) with modified requirements from the U.S. banking framework's advanced approaches (12 CFR 217.133 and 12 CFR 217.132(b)). As a result, the proposed rule's requirements for cleared transactions would reflect the U.S. banking framework's risk weights on cleared transactions and risk-weighted assets on default fund contributions. The proposal would depart from the U.S. banking framework by omitting exposure calculations related to internal model methodology to reduce reliance on the Enterprises' internal model results.

The proposed rule's requirements for collateralized transactions would maintain the current collateral haircut approach and standard supervisory haircuts, both of which are also included in the U.S. banking framework. However, the proposed rule's requirements for collateralized transactions would remove the current simple approach and add the U.S. banking framework's simple value-at-risk (VaR) methodology to align with the U.S. banking framework's advanced approaches application of collateralized transactions.

The proposed rule would also add credit valuation adjustment (CVA) risk-weighted assets to the calculation of standardized total risk-weighted assets. The CVA is a fair value adjustment that reflects counterparty credit risk in the valuation of OTC derivative contracts. CVA risk-weighted assets cover the risk of incurring mark-to-market losses because of the deterioration in the creditworthiness of an Enterprise's counterparties. The proposed rule would include the U.S. banking framework's formulaic simple CVA approach but not the advanced CVA approach. This departure from the U.S. banking framework would reduce reliance on the Enterprises' internal model results.

The proposed changes to the approaches for derivatives and cleared transactions would affect both risk-weighted assets and adjusted total assets. FHFA estimates that under the proposed rule, the total CET1 capital required to meet the risk-based capital requirements and buffers for the Enterprises' derivatives and cleared transactions as of September 30, 2022 would increase by less than $0.1 billion.

Question 13: In addition to the risk-sensitivity enhancements SA–CCR provides relative to CEM, what, if any, other factors should FHFA consider in its determination to replace CEM with SA–CCR?

D. Representative Credit Scores for Single-Family Mortgage Exposures

Credit scores are a primary risk factor for determining the riskiness of a single-family mortgage exposure due to their strong correlation with the likelihood of a borrower default. Therefore, credit scores are an important input in the ERCF calculation of risk weights for single-family mortgage exposures, both at origination (original credit score) and over time (refreshed credit score). A single-family mortgage exposure is normally associated with multiple credit scores because an exposure can have multiple borrowers and each borrower can have multiple scores. Often, each borrower has three credit reports and, therefore, three credit scores, one from each national consumer reporting agency (repository). To account for multiple credit scores associated with a single-family mortgage exposure, the ERCF includes a procedure to determine a single representative credit score for each single-family mortgage exposure.

The proposed rule would modify the current procedure for selecting a representative credit score to reflect FHFA's announcement [12] in October 2022 that the Enterprises will require two, rather than three, credit reports from the repositories (bi-merge credit report requirement). While the implementation date for the bi-merge credit report requirement has yet to be announced, the proposed rule would position the Enterprises to account for the new requirement upon implementation.

The current ERCF instructs the Enterprises to use a two-step procedure for identifying the representative credit score on a single-family mortgage exposure. In the first step, an Enterprise

[12] FHFA Announces Validation of FICO 10T and VantageScore 4.0 for Use by Fannie Mae and Freddie Mac | Federal Housing Finance Agency, *available at https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Validation-of-FICO10T-and-Vantage-Score4-for-FNM-FRE.aspx.*

selects a single score for each borrower on the loan by either selecting the median score if the borrower has scores from three repositories or selecting the lowest score if the borrower has fewer than three scores. In the second step, an Enterprise determines the representative score for the exposure by selecting the lowest single score across all borrowers from step one.

After the adoption of the bi-merge credit score requirement, the current procedure for determining a representative credit score could result in a significant downward shift in representative credit scores for most borrowers. This is because with the bi-merge credit report requirement, there is a higher likelihood that the representative credit score for most borrowers would end up being the lower of two scores rather than the median of three scores.

To mitigate this risk, the proposed rule would replace the first step in determining a single-family mortgage exposure's representative credit score. Rather than using the median or lowest score, the proposed rule would require an Enterprise to calculate the average credit score across repositories for each borrower in step one. This change should mitigate the concern about downward bias, as the average across the two scores is closer to the center of the borrower's credit score distribution than the minimum across scores. To validate this assumption, FHFA analyzed original credit scores from over 39 million borrowers associated with loans acquired between 2010 and 2022 and found that changing the procedure from the minimum of the medians to the minimum of the averages (where for each borrower FHFA selected, at random, two out of three scores) had little aggregate effect on the average representative score. The results of this analysis suggested that under the current rule, the average representative credit score was 750.6, whereas under the proposed rule, the average representative credit score was 750.3 using two borrower scores (selected at random from the set of three) and 750.7 using three borrower scores.

The proposed change to step one would also alleviate concerns about when the bi-merge credit score requirement will be implemented. To examine the effect of the proposed change before the implementation date of the bi-merge credit score requirement, FHFA repeated the previous analysis but analyzed the difference between the use of the median of three scores and the use of the mean of three scores. The results of this analysis again showed little change (750.6 vs. 750.7) in the central tendency of the representative credit score distributions, and it showed there is little difference between the two approaches in aggregate. Under the proposed rule, FHFA expects that for the period before the implementation date of the bi-merge credit score requirement the borrower credit score would typically be based on three scores, and after the implementation date the borrower credit score would typically be based on two scores.

The proposed change to the procedure for selecting a representative credit score would affect risk-weighted assets, only. FHFA estimates that under the proposed rule, the total CET1 capital required to meet the risk-based capital requirements for the Enterprises' single-family mortgage exposures as of June 30, 2022 would decline by less than $0.1 billion.

Question 14: What, if any, changes should FHFA consider to the proposed methodology for determining a representative credit score? For example, should FHFA consider requiring an Enterprise to calculate a representative credit score by averaging credit scores across multiple borrowers in step two rather than by taking the lowest score across those borrowers?

E. Original Credit Scores for Single-Family Mortgage Exposures Without a Representative Original Credit Score

As discussed above, credit scores play an important role in the ERCF calculation of risk weights for single-family mortgage exposures due to their strong correlation with the likelihood of a borrower default. Credit scores are commonly used as a proxy for a borrower's creditworthiness and are therefore a primary input in many lenders' automated underwriting systems. Historically, and in particular prior to the financial crisis, a borrower's lack of credit history and credit score indicated a significant level of risk. Therefore, the current ERCF requires an Enterprise to assign a credit score of 600 to any single-family mortgage exposure where a permissible credit score cannot be determined (unscored). This conservative assignation places single-family mortgage exposures with unscored borrowers in the lowest possible ERCF credit score buckets across the single-family base grids, implying the highest level of risk.

However, advances in financial regulation and improvements in mortgage underwriting and lending standards since the financial crisis suggest that FHFA's initial credit score assignation for single-family mortgage exposures associated with unscored borrowers may not accurately reflect the prevailing level of credit risk in these exposures. Although a missing credit score could be due to a data error, today it is far more likely the loan was either manually underwritten with the establishment of nontraditional credit and strict requirements on property type, loan purpose, and DTI, or the loan was underwritten through an automated system with more stringent requirements than would be necessary if the borrower had an available credit score.[13]

To reflect the post-crisis improvements in regulatory, underwriting, and lending standards, as well as the recent inclusions of positive rental payment histories in the Enterprises' automated underwriting systems, the proposed rule would modify the assignation process of an original credit score to a single-family mortgage exposure without a permissible credit score at origination. FHFA analyzed the two-year default performance of single-family mortgage exposures associated with unscored borrowers relative to similar exposures associated with scored borrowers and determined that unscored exposures performed most similarly to scored exposures with original credit scores in the range of 680 to 699. Therefore, subject to Enterprise verification that none of the borrowers have a credit score at one of the repositories, the proposed rule would require an Enterprise to assign an original credit score of 680 to a single-family mortgage exposure without a permissible credit score at origination.

After five months, an Enterprise would continue to assign a refreshed credit score. To reflect the implied default performance in the population of unscored borrowers, the proposed rule would modify the definition of a refreshed credit score to mean the most recently available credit score. For a single-family mortgage exposure without a permissible credit score at origination, the refreshed credit score would be either an updated credit score if one is available at the credit repositories or the original credit score, as determined per the proposed rule, if one is not.

[13] In August 2021, FHFA announced that to expand access to credit in a safe and sound manner, Fannie Mae would begin to consider rental payment history as part of its mortgage underwiring processes (*https://www.fhfa.gov/mobile/Pages/public-affairs-detail.aspx?PageName=FHFA-Announces-Inclusion-of-Rental-Payment-History-in-Fannie-Maes-Underwriting-Process.aspx*). In July 2022, Freddie Mac made a similar announcement (*https://freddiemac.gcs-web.com/news-releases/news-release-details/freddie-mac-takes-further-action-help-renters-achieve*).

The proposed change to the assignation process of an original credit score to a single-family mortgage exposure without a permissible credit score at origination would affect risk-weighted assets during the period between origination and the later of 5 months and when a borrower's refreshed credit score becomes available. FHFA estimates that under the proposed rule, required CET1 capital for the Enterprises' single-family mortgage exposures as of June 30, 2022 would decline by less than $0.1 billion.

Question 15: What, if any, changes should FHFA consider to the proposed methodology for determining an original credit score for a single-family mortgage exposure without a permissible credit score at origination?

F. Guarantee Assets

A guarantee asset is an on-balance sheet asset that represents the present value of a future consideration for providing a financial guarantee on a portfolio of mortgage exposures not recognized on the balance sheet. Examples of such off-balance sheet exposures include, but are not limited to, Freddie Mac's multifamily K-deals, Fannie Mae's multifamily bond credit enhancements, and certain single-family guarantee arrangements without securitization. The current ERCF does not include an explicit risk weight for guarantee assets. As an ''other asset'' not specifically assigned a different risk weight, an Enterprise is required to assign a 100 percent risk weight (§ 1240.32(i)(5)) to guarantee assets.

The proposed rule would introduce a 20 percent risk weight for an Enterprise's guarantee assets. This risk weight would reflect the risk-weight floor for mortgage exposures in the ERCF as well as the minimum risk weight for residential mortgage exposures under the Basel framework. In addition, FHFA's proposal would promote consistency across the financial system by aligning the risk weight for guarantee assets with the risk weight assigned to exposures to an Enterprise in the U.S banking framework.

The specification of a 20 percent risk weight for guarantee assets would affect risk-weighted assets, only. FHFA estimates that under the proposed rule, the total CET1 capital required to meet the risk-based capital requirements for the Enterprises' guarantee assets as of September 30, 2022 would decline by approximately $0.2 billion.

Question 16: What, if any, other factors should FHFA consider in its determination that guarantee assets should be assigned an explicit risk weight?

Question 17: Is the proposed 20 percent risk weight for guarantee assets appropriately calibrated?

Question 18: Should FHFA include guarantee assets in its definition of covered positions subject to market risk capital requirements?

G. Mortgage Servicing Assets

When a lender originates a mortgage loan, the lender may retain in its portfolio or transfer to another party both the loan and the servicing function, or the lender may separate the mortgage servicing rights (MSRs) from the mortgage loan and transfer individually either the loan or the MSR to another party. MSAs are, in general, assets resulting from owning MSRs that are expected to generate future income in exchange for performing the servicing function on one or more mortgage loans.

MSA valuations rely on assessments of future economic variables and are therefore subjective and subject to uncertainty. If interest rates rapidly decline, such as during a stress event, MSA values can also rapidly decline. In addition, adverse financial conditions may cause liquidity strains for firms seeking to sell or transfer their MSAs, further impacting the potential loss absorbing capacity of MSAs. For these and other reasons, the U.S. banking framework requires banks to capitalize MSAs through a combination of capital deductions and a 250 percent risk weight, and the current ERCF requires the Enterprises to do the same.

The ERCF defines an MSA as the contractual right to service for a fee mortgage loans that are owned by others. This definition reflects the traditional practice of acquiring MSRs for mortgage loans not already owned by the acquiring institution. However, it is unlikely that the value of MSRs would be less subjective or subject to less uncertainty if the underlying mortgage loans were already owned by the acquiring institution rather than by others. Therefore, the proposed rule would modify the definition of MSAs to include the contractual right to service any mortgage loans, regardless of the owner of the loan at the time the servicing rights are acquired.

FHFA anticipates that the proposed rule would not affect the total CET1 capital required to meet the Enterprises' stability capital buffers as of June 30, 2022.

Question 19: What, if any, changes should FHFA consider to the proposed definition for MSAs?

Question 20: Does the proposed definition for MSAs include circumstances in which an Enterprise acquires a contractual right to service mortgage loans already owned by the Enterprise?

Question 21: Does the proposed definition for MSAs include circumstances in which an Enterprise acquires a contractual right to service mortgage loans but, for reasons including compliance with generally accepted accounting principles, the servicing rights would not result in the creation of an MSA in the absence of the proposed requirement?

H. Time-Based Calls for CRT Exposures

For mortgage exposures that are included in a CRT, an Enterprise has the option to calculate risk weights using the ''credit risk transfer approach'' [14] only if the CRT satisfies the ERCF's ''operational criteria for credit risk transfers.'' [15] Under the current rule, these operational criteria include restrictions for clean-up calls. Clean-up calls are contractual provisions that permit an originating Enterprise to redeem securitization exposures before their stated maturity or call date. Time-based calls are contractual provisions that permit an issuing Enterprise to redeem a securitization exposure on one or more prespecified call dates. Time-based calls, which are integral to the Enterprises' credit risk management and are routinely used by the Enterprises to manage CRT economics, are not explicitly included as eligible clean-up calls. This lack of specificity has led to a lack of clarity about the eligibility of CRT transactions with time-based calls under the credit risk transfer approach in the ERCF.

The proposed rule would define an eligible time-based call as a time-based call that:

(i) Is exercisable solely at the discretion of the issuing Enterprise, and with a non-objection letter from FHFA prior to being exercised;

(ii) Is not structured to avoid allocating losses to securitization exposures held by investors or otherwise structured to provide at most de minimis credit protection to the securitization; and

(iii) Is only exercisable five years after the securitization exposure's issuance date.

The proposed changes would clarify that the ERCF permits time-based calls, with restrictions. To ensure a significant length of time before the first prespecified exercise date, the proposed rule would require that the eligible time-based calls have a first exercise call date at least five years after issuance. Further, to ensure safety and soundness,

[14] 12 CFR 1240.44.

[15] 12 CFR 1240.41(c).

an Enterprise must request FHFA approval before exercising its time-based calls.

To satisfy the proposed operational criteria for CRT, any time-based call associated with a CRT must be an eligible time-based call.

FHFA anticipates that the proposed rule would result in an insignificant change to the total CET1 capital required to meet the risk-based capital requirements for the Enterprises' CRT exposures as of June 30, 2022.

Question 22: What, if any, changes should FHFA consider to the proposed definitions of time-based calls and eligible time-based calls for CRT?

I. Interest-Only Mortgage-Backed Securities

An IO MBS is a financial instrument that receives solely the interest payment stream generated by a pool of mortgages. An Enterprise may securitize the IO income stream from a pool of mortgages to better manage the interest rate risk exposure of the pool, or an Enterprise may buy IO securities of other issuers to hold in its portfolio as investment assets. Through the ownership of these investments, the Enterprises are exposed to both credit and market risk. This discussion pertains to credit risk only, as risk weights for market risk on IO securities are contemplated in subpart F of the ERCF.

Under the current rule, an Enterprise must assign a zero percent risk weight to any MBS guaranteed by the Enterprise (other than any retained CRT exposure). Thus, by implication, IO MBS guaranteed by the securitizing Enterprise should receive a zero percent risk weight. However, the ERCF also states that the risk weight for a non-credit-enhancing IO MBS must not be less than 100 percent. Therefore, there is a need to clarify the risk weight for IO MBS to clarify whether a zero percent or 100 percent risk weight should apply.

An Enterprise could be both the issuer of and investor in an IO MBS. The credit risk on IO MBS issued and guaranteed by an Enterprise is significantly different from that of an IO MBS issued by a non-Enterprise entity and held in the Enterprise's retained portfolio as an investment.[16] Therefore, the proposed rule would require an Enterprise to apply a different risk weight to IO MBS issued and guaranteed by the Enterprise versus an IO MBS issued by a non-Enterprise entity. This bifurcation would better align the capital requirements for IO MBS to the risks inherent in the positions.

For IO MBS issued and guaranteed by an Enterprise, the proposed rule would require the issuing Enterprise to assign a zero percent risk weight to that exposure. The zero percent risk weight reflects that the Enterprise has already capitalized the credit risk on the underlying single-family mortgage exposures and that there is no incremental credit risk due to the securitization process. For IO MBS issued by a non-Enterprise entity, the proposed rule would require the Enterprise to assign a 100 percent risk weight to that exposure. The 100 percent risk weight reflects that there is incremental credit risk accruing to the investing Enterprise through the acquisition of the IO MBS. Therefore, an Enterprise must hold credit risk capital against that asset. For IO MBS issued by the other Enterprise, the ERCF would continue to require an Enterprise to assign a 20 percent risk weight to that exposure.

FHFA anticipates that the proposed rule would not affect the total CET1 capital required to meet the risk-based capital requirements for the Enterprises' IO MBS as of June 30, 2022.

Question 23: Is the 100 percent risk weight assigned to the IO MBS issued by a non-Enterprise entity appropriately calibrated?

Question 24: Is the 20 percent risk weight assigned to the IO MBS issued by the other Enterprise appropriated calibrated?

J. Single-Family Countercyclical Adjustment

In the ERCF, the mark-to-market loan-to-value ratio (MTMLTV) of a single-family mortgage exposure is a key input to determining credit risk-weighted assets for these exposures. The rule requires an Enterprise to use the FHFA Purchase-only State-level House Price Index (HPI) to update a property value when calculating an MTMLTV. The MTMLTV is then adjusted up or down by the application of a single-family countercyclical adjustment. This adjustment seeks to reduce the procyclicality of the capital requirements by increasing requirements when house prices are significantly above their long-term trend and reducing requirements when house prices are significantly below their long-term trend.

In calculating an MTMLTV, the ERCF mandates a six-month delay between loan origination and the first property value adjustment to reflect the time lag between loan origination and the publication of the FHFA HPI for the quarter following origination. However, there is no similar delay in the application of the single-family countercyclical adjustment. When house price appreciation is consistently high, such as in 2020 and 2021, this misalignment results in rapid increases to the risk-weighted assets for single-family mortgage exposures for the first six months due to the countercyclical adjustment, followed by a rapid decrease with the application of the first property value adjustment. In 2020 and 2021, this misalignment created a significant challenge for the Enterprises' reinsurance CRT programs. While FHFA has continually encouraged the Enterprises to reduce the time lag between loan origination and when they acquire credit protection, the misalignment created an incentive for the Enterprises to wait seven months before acquiring protection. By waiting until the capital requirement decreased mechanically, the Enterprises were able to reduce the amount of credit protection they acquired and save on premium costs.

The proposed rule would correct this misalignment by requiring an Enterprise to apply the first single-family countercyclical adjustment simultaneously with the first property value adjustment. This modification would reduce the volatility in the capital requirement for a single-family mortgage exposure over the first six months after origination and mitigate the incentive for the Enterprises to delay acquiring credit protection.

FHFA anticipates that adjusting the timing of the first single-family countercyclical adjustment would not affect the total CET1 capital required to meet the risk-based capital requirements for the Enterprises' single-family mortgage exposures as of June 30, 2022.

Question 25: What, if any, changes should FHFA consider to the proposed adjustment to the timing and application of the single-family countercyclical adjustment?

K. Stability Capital Buffer

The stability capital buffer is an Enterprise-specific amount of common equity tier 1 capital in excess of an Enterprise's risk-based capital requirements. It is tailored to the risk that an Enterprise's default or other financial distress could have on the liquidity, efficiency, competitiveness, or resiliency of the national housing finance markets. The stability capital buffer is based on an Enterprise's share of the total residential mortgage debt outstanding in the United States and is expressed as a percent of adjusted total assets.

[16] Risk weights for an Enterprise's exposures to the other Enterprise are determined in 12 CFR 1240.32(c).

Under the current rule, an Enterprise's share of residential mortgage debt outstanding is assessed annually, and the stability capital buffer is derived from that assessment. Increases in the stability capital buffer are implemented with a two-year delay, while decreases are implemented with a one-year delay. These implementation delays contribute to the overall stability of the capital framework by providing the Enterprises with time to adjust their capital positions in response to changes in the stability capital buffer. However, having increases and decreases implemented with different delays potentially creates a situation where an increase and a decrease in the stability capital buffer are scheduled to become effective at the same time. To address this situation, the proposed rule would clarify that if an increase and decrease in the stability capital buffer are scheduled for the same date, the Enterprise should rely on the more recent data and implement the decrease, disregarding the increase.

FHFA anticipates that the proposed rule would not affect the total CET1 capital required to meet the Enterprises' stability capital buffers as of June 30, 2022.

Question 26: What, if any, changes should FHFA consider to the proposed change to the application of the stability capital buffer?

L. Advanced Approaches

The ERCF's advanced approaches for determining risk-weighted assets rely on an Enterprise's internal models. These approaches require an Enterprise to maintain its own processes for identifying and assessing credit, market, and operational risk. They are intended to ensure that an Enterprise continues to enhance its risk management and analytical systems and not rely solely on its regulator's views on risk tolerance, risk measurement, and capital allocation. Because of the effort required to develop the governance processes and risk models necessary for effectuating the advanced approaches, the ERCF includes a transition period that delays the compliance date for the advanced approaches until January 1, 2025.

In December 2017, the Basel Committee finalized its Basel III framework.[17] As part of these post-crisis reforms, the Basel Committee sought to reduce excess variability of risk-weighted assets and restore credibility in the calculation of risk-weighted assets, in part by significantly constraining the use of internally-modeled approaches. Much of the finalized Basel III framework became effective in 2022.

U.S. banking regulators have yet to implement many of the reforms outlined in the finalized Basel III framework. However, on September 9, 2022, the U.S. banking regulators formally reaffirmed their commitment to implementing enhanced regulatory capital requirements that align with the finalized Basel III framework.[18] Further, in a recent speech,[19] the Vice Chair for Supervision of the Board of Governors of the Federal Reserve System noted that the last set of comprehensive adjustments to the Basel III framework, now under consideration in the U.S., would ''further strengthen capital rules by reducing reliance on internal bank models.''

Because the U.S. banking regulators are currently contemplating the last set of comprehensive adjustments to the Basel III framework, including the reliance on internal models, and given the costly nature of developing suitable internal models and governance processes for the advanced approaches, the proposed rule would further extend the compliance date for an Enterprise's advanced approaches to January 1, 2028. Until that time, the Enterprises will continue to rely on the standardized approach.

III. Effective Date

Under the rule published on December 17, 2020 establishing the ERCF, an Enterprise will not be subject to any requirement in the ERCF until the compliance date for the requirement as detailed in the ERCF. The effective date for the ERCF was February 16, 2021. The effective date for the ERCF amendments in this proposed rule would be 60 days after the day of publication of the final rule in the **Federal Register**.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). The proposed rule contains no such collection of information requiring OMB approval under the PRA. Therefore, no information has been submitted to OMB for review.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. FHFA certifies that the proposed rule, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities because the proposed rule is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects for 12 CFR Part 1240

Capital, Credit, Enterprise, Investments, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the Preamble, under the authority of 12 U.S.C. 4511, 4513, 4513b, 4514, 4515–17, 4526, 4611–4612, 4631–36, FHFA proposes to amend part 1240 of title 12 of the Code of Federal Regulations as follows:

PART 1240—CAPITAL ADEQUACY OF ENTERPRISES

■ 1. The authority citation for part 1240 continues to read as follows:

Authority: 12 U.S.C. 4511, 4513, 4513b, 4514, 4515, 4517, 4526, 4611–4612, 4631–36.

■ 2. Amend § 1240.2 by:

■ a. Revising paragraphs (1) through (3) in the definition of ''Adjusted total assets'';

■ b. Adding in alphabetical order the definitions of ''Backtesting,'' ''Basis derivative contract,'' ''Commercial end-user,'' ''Commingled security,'' ''Credit default swap,'' and ''Credit valuation adjustment'';

■ c. Removing the definitions of ''Current exposure'' and ''Current exposure methodology'';

■ d. Adding in alphabetical order the definition of ''Eligible time-based call'';

■ e. In the definition of ''Exposure amount'':

■ i. In paragraph (1), removing the words ''; an OTC derivative contract'' and adding in their place the words ''(other than an OTC derivative contract''; and

■ ii. In paragraph (3), adding the words ''or exposure at default (EAD)'' after the word ''amount'';

■ f. Revising paragraph (2) in the definition of ''Financial collateral'';

[17] *https://www.bis.org/bcbs/publ/d424.pdf.*

[18] *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20220909a.htm.*

[19] *https://www.federalreserve.gov/newsevents/speech/barr20221201a.htm.*

■ g. Adding in alphabetical order the definitions of ''Guarantee asset,'' and ''Independent collateral'';
■ h. Revising the definition of ''Mortgage servicing assets'';
■ i. Adding in alphabetical order the definition of ''Net independent collateral amount'';
■ j. Revising the definition of ''Netting set'';
■ k. Adding in alphabetical order the definitions of ''Qualifying cross-product master netting agreement,'' and ''Speculative grade'';
■ l. In the definition of ''Standardized total risk-weighted assets'', redesignating paragraphs (1)(vi) and (1)(vii) as paragraphs (1)(vii) and (1)(viii), adding new paragraph (1)(vi), and revising newly designated paragraph (1)(viii); and
■ m. Adding in alphabetical order the definitions of ''Sub-speculative grade,'' ''Time-based call,'' ''Uniform Mortgage-backed Security,'' ''Value-at-Risk,'' ''Variation margin,'' ''Variation margin amount,'' and ''Volatility derivative contract'';

The additions and revisions read as follows:

§ 1240.2 Definitions.

* * * * *

Adjusted total assets * * *

(1) The balance sheet carrying value of all of the Enterprise's on-balance sheet assets, plus the value of securities sold under a repurchase transaction or a securities lending transaction that qualifies for sales treatment under Generally Accepted Accounting Principles (GAAP), less amounts deducted from tier 1 capital under § 1240.22(a), (c), and (d), and less the value of securities received in security-for-security repo-style transactions, where the Enterprise acts as a securities lender and includes the securities received in its on-balance sheet assets but has not sold or re-hypothecated the securities received, *less* the fair value of any derivative contracts;

(2)(i) The potential future exposure (PFE) for each netting set to which the Enterprise is a counterparty (including cleared transactions except as provided in paragraph (9) of this definition and, at the discretion of the Enterprise, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under GAAP), as determined under § 1240.36(c)(7), in which the term C in § 1240.36(c)(7)(i) equals zero, and, for any counterparty that is not a commercial end-user, multiplied by 1.4. For purposes of this paragraph, an Enterprise may set the value of the term C in § 1240.36(c)(7)(i) equal to the amount of collateral posted by a clearing member client of the Enterprise in connection with the client-facing derivative transactions within the netting set; and

(ii) An Enterprise may choose to exclude the PFE of all credit derivatives or other similar instruments through which it provides credit protection when calculating the PFE under § 1240.36(c), provided that it does so consistently over time for the calculation of the PFE for all such instruments;

(3)(i)(A) The replacement cost of each derivative contract or single product netting set of derivative contracts to which the Enterprise is a counterparty, calculated according to the following formula, and, for any counterparty that is not a commercial end-user, multiplied by 1.4:

$$\textit{Replacement Cost} = \max\{V - CVM_r + CVM_p; 0\}$$

Where:

(1) V equals the fair value for each derivative contract or each single-product netting set of derivative contracts (including a cleared transaction except as provided in paragraph (9) of this definition and, at the discretion of the Enterprise, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under GAAP);

(2) CVM_r equals the amount of cash collateral received from a counterparty to a derivative contract and that satisfies the conditions in paragraphs (3)(ii) through (vi) of this definition, or, in the case of a client-facing derivative transaction, the amount of collateral received from the clearing member client; and

(3) CVM_p equals the amount of cash collateral that is posted to a counterparty to a derivative contract and that has not offset the fair value of the derivative contract and that satisfies the conditions in paragraphs (3)(ii) through (vi) of this definition, or, in the case of a client-facing derivative transaction, the amount of collateral posted to the clearing member client;

(B) Notwithstanding paragraph (3)(i)(A) of this definition, where multiple netting sets are subject to a single variation margin agreement, an Enterprise must apply the formula for replacement cost provided in § 1240.36(c)(10)(i), in which the term C_{MA} may only include cash collateral that satisfies the conditions in paragraphs (3)(ii) through (vi) of this definition; and

(C) For purposes of paragraph (3)(i)(A) of this definition, an Enterprise must treat a derivative contract that references an index as if it were multiple derivative contracts each referencing one component of the index if the Enterprise elected to treat the derivative contract as multiple derivative contracts under § 1240.36(c)(5)(vi);

(ii) For derivative contracts that are not cleared through a QCCP, the cash collateral received by the recipient counterparty is not segregated (by law, regulation, or an agreement with the counterparty);

(iii) Variation margin is calculated and transferred on a daily basis based on the mark-to-fair value of the derivative contract;

(iv) The variation margin transferred under the derivative contract or the governing rules of the CCP or QCCP for a cleared transaction is the full amount that is necessary to fully extinguish the net current credit exposure to the counterparty of the derivative contracts, subject to the threshold and minimum transfer amounts applicable to the counterparty under the terms of the derivative contract or the governing rules for a cleared transaction;

(v) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract, provided that for the purposes of this paragraph, currency of settlement means any currency for settlement specified in the governing qualifying master netting agreement and the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction; and

(vi) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or by the governing rules for a cleared transaction, and the qualifying master netting agreement or the governing rules for a cleared transaction must explicitly stipulate that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided under the contract if a credit event involving either counterparty occurs;

* * * * *

Backtesting means the comparison of an Enterprise's internal estimates with actual outcomes during a sample period not used in model development. In this

context, backtesting is one form of out-of-sample testing.

* * * * *

Basis derivative contract means a non-foreign-exchange derivative contract (*i.e.,* the contract is denominated in a single currency) in which the cash flows of the derivative contract depend on the difference between two risk factors that are attributable solely to one of the following derivative asset classes: Interest rate, credit, equity, or commodity.

* * * * *

Commercial end-user means an entity that:

(1)(i) Is using derivative contracts to hedge or mitigate commercial risk; and

(ii)(A) Is not an entity described in section 2(h)(7)(C)(i)(I) through (VIII) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(C)(i)(I) through (VIII)); or

(B) Is not a ''financial entity'' for purposes of section 2(h)(7) of the Commodity Exchange Act (7 U.S.C. 2(h)) by virtue of section 2(h)(7)(C)(iii) of the Act (7 U.S.C. 2(h)(7)(C)(iii)); or

(2)(i) Is using derivative contracts to hedge or mitigate commercial risk; and

(ii) Is not an entity described in section 3C(g)(3)(A)(i) through (viii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(3)(A)(i) through (viii)); or

(3) Qualifies for the exemption in section 2(h)(7)(A) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(A)) by virtue of section 2(h)(7)(D) of the Act (7 U.S.C. 2(h)(7)(D)); or

(4) Qualifies for an exemption in section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(1)) by virtue of section 3C(g)(4) of the Act (15 U.S.C. 78c–3(g)(4)).

Commingled security means a resecuritization of UMBS in which one or more of the underlying exposures is a UMBS guaranteed by the other Enterprise or is a resecuritization of UMBS guaranteed by the other Enterprise.

* * * * *

Credit default swap (CDS) means a financial contract executed under standard industry documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure(s)) to another party (the protection provider) for a certain period of time.

* * * * *

Credit valuation adjustment (CVA) means the fair value adjustment to reflect counterparty credit risk in valuation of OTC derivative contracts.

* * * * *

Eligible time-based call means a time-based call that:

(1) Is exercisable solely at the discretion of the originating Enterprise, provided the Enterprise obtains FHFA's non-objection prior to exercising the time-based call;

(2) Is not structured to avoid allocating credit losses to investors or otherwise structured to provide at most de minimis credit protection to the securitization or credit risk transfer; and

(3) Is exercisable no less than five years after the securitization or credit risk transfer issuance date.

* * * * *

Financial collateral * * *

(2) In which the Enterprise has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof, (with the exception of cash on deposit; and notwithstanding the prior security interest of any custodial agent or any priority security interest granted to a CCP in connection with collateral posted to that CCP).

* * * * *

Guarantee asset means the present value of a future consideration to be received for providing a financial guarantee on a portfolio of mortgage exposures not recognized on the balance sheet.

Independent collateral means financial collateral, other than variation margin, that is subject to a collateral agreement, or in which an Enterprise has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit; notwithstanding the prior security interest of any custodial agent or any prior security interest granted to a CCP in connection with collateral posted to that CCP), and the amount of which does not change directly in response to the value of the derivative contract or contracts that the financial collateral secures.

* * * * *

Mortgage servicing assets (MSAs) means the contractual rights to service mortgage loans for a fee.

* * * * *

Net independent collateral amount means the fair value amount of the independent collateral, as adjusted by the standard supervisory haircuts under § 1240.39(b)(2)(ii), as applicable, that a counterparty to a netting set has posted to an Enterprise less the fair value amount of the independent collateral, as adjusted by the standard supervisory haircuts under § 1240.39(b)(2)(ii), as applicable, posted by the Enterprise to the counterparty, excluding such amounts held in a bankruptcy remote manner or posted to a QCCP and held in conformance with the operational requirements in § 1240.3.

Netting set means a group of transactions with a single counterparty that are subject to a qualifying master netting agreement or a qualifying cross-product master netting agreement. For derivative contracts, netting set also includes a single derivative contract between an Enterprise and a single counterparty.

* * * * *

Qualifying cross-product master netting agreement means a qualifying master netting agreement that provides for termination and close-out netting across multiple types of financial transactions or qualifying master netting agreements in the event of a counterparty's default, provided that the underlying financial transactions are OTC derivative contracts, eligible margin loans, or repo-style transactions. In order to treat an agreement as a qualifying cross-product master netting agreement for purposes of this subpart, an Enterprise must comply with the requirements of § 1240.3(c) with respect to that agreement.

* * * * *

Speculative grade means the reference entity has adequate capacity to meet financial commitments in the near term, but is vulnerable to adverse economic conditions, such that should economic conditions deteriorate, the reference entity would present an elevated default risk.

* * * * *

Standardized total risk-weighted assets * * *

(1) * * *

(vi) Credit valuation adjustment (CVA) risk-weighted assets as calculated under § 1240.36(d);

* * * * *

(viii) Standardized market risk-weighted assets, as calculated under § 1240.204; minus

* * * * *

Sub-speculative grade means the reference entity depends on favorable economic conditions to meet its financial commitments, such that should such economic conditions deteriorate the reference entity likely would default on its financial commitments.

* * * * *

Time-based call means a contractual provision that permits an originating Enterprise to redeem a securitization exposure on or after a specified redemption or cancellation date.

* * * * *

Uniform Mortgage-backed Security (UMBS) means the same as that defined in § 1248.1.

Value-at-Risk (VaR) means the estimate of the maximum amount that the value of one or more exposures could decline due to market price or rate movements during a fixed holding period within a stated confidence interval.

Variation margin means financial collateral that is subject to a collateral agreement provided by one party to its counterparty to meet the performance of the first party's obligations under one or more transactions between the parties as a result of a change in value of such obligations since the last time such financial collateral was provided.

* * * * *

Variation margin amount means the fair value amount of the variation margin, as adjusted by the standard supervisory haircuts under § 1240.39(b)(2)(ii), as applicable, that a counterparty to a netting set has posted to an Enterprise less the fair value amount of the variation margin, as adjusted by the standard supervisory haircuts under § 1240.39(b)(2)(ii), as applicable, posted by the Enterprise to the counterparty.

* * * * *

Volatility derivative contract means a derivative contract in which the payoff of the derivative contract explicitly depends on a measure of the volatility of an underlying risk factor to the derivative contract.

* * * * *

§ 1240.4 [Amended]

■ 3. Amend § 1240.4(c) by removing the year ''2025'' and adding, in its place, the year ''2028''.

■ 4. Amend § 1240.31 by:

■ a. In paragraph (a)(1)(iv) removing the word ''or'' after the '';'';

■ b. In paragraph (a)(1)(v) removing the ''.'' after ''1240.52'' and adding ''; or'' in its place; and

■ c. Adding paragraph (a)(1)(vi) to read as follows:

§ 1240.31 Mechanics for calculating risk-weighted assets for general credit risk.

(a) * * *

(1) * * *

(vi) CVA risk-weighted assets subject to § 1240.36(d).

* * * * *

■ 5. Amend § 1240.32 by:

■ a. Redesignating paragraph (c)(2) as paragraph (c)(3), adding new paragraph (c)(2), and revising redesignated paragraph (c)(3); and

■ b. Redesignating paragraph (i)(5) as paragraph (i)(6) and adding new paragraph (i)(5).

The additions and revision read as follows:

§ 1240.32 General risk weights.

(c) * * *

(2) An Enterprise must assign a 5 percent risk weight to an exposure to the other Enterprise in a commingled security.

(3) An Enterprise must assign a 20 percent risk weight to an exposure to another GSE, including an MBS guaranteed by the other Enterprise, except for exposures under paragraph (c)(2) of this section.

* * * * *

(i) * * *

(5) An Enterprise must assign a 20 percent risk weight to guarantee assets.

* * * * *

■ 6. Amend § 1240.33 by:

■ a. Revising paragraph (ii) in the definition of ''Adjusted MTMLTV''; and

■ b. Revising table 1 to paragraph (a).

The revisions read as follows:

§ 1240.33 Single-family mortgage exposures.

(a) * * *

Adjusted MTMLTV * * *

(ii) The amount equal to 1 plus either:

(A) The single-family countercyclical adjustment available at the time of the exposure's origination if the loan age of the single-family mortgage exposure is less than or equal to 5; or

(B) The single-family countercyclical adjustment available as of that time if the loan age of the single-family mortgage exposure is greater than or equal to 6.

* * * * *

TABLE 1 TO PARAGRAPH (a)—PERMISSIBLE VALUES AND ADDITIONAL INSTRUCTIONS

Defined term	Permissible values	Additional instructions
Cohort burnout	''No burnout,'' if the single-family mortgage exposure has not had a refinance opportunity since the loan age of the single-family mortgage exposure was 6. ''Low,'' if the single-family mortgage exposure has had 12 or fewer refinance opportunities since the loan age of the single-family mortgage exposure was 6. ''Medium,'' if the single-family mortgage exposure has had between 13 and 24 refinance opportunities since the loan age of the single-family mortgage exposure was 6. ''High,'' if the single-family mortgage exposure has had more than 24 refinance opportunities since the loan age of the single-family mortgage exposure was 6.	High if unable to determine.
Coverage percent	0 percent ≤ coverage percent ≤ 100 percent	0 percent if outside of permissible range or unable to determine.
Days past due	Non-negative integer	210 if negative or unable to determine.
Debt-to-income (DTI) ratio.	0 percent < DTI < 100 percent	42 percent if outside of permissible range or unable to determine.
Interest-only (IO)	Yes, no	Yes if unable to determine.
Loan age	0 ≤ loan age ≤ 500	500 if outside of permissible range or unable to determine.
Loan documentation	None, low, full	None if unable to determine.
Loan purpose	Purchase, cashout refinance, rate/term refinance	Cashout refinance if unable to determine.
MTMLTV	0 percent < MTMLTV ≤ 300 percent	If the property securing the single-family mortgage exposure is located in Puerto Rico or the U.S. Virgin Islands, use the FHFA House Price Index of the United States. If the property securing the single-family mortgage exposure is located in Hawaii, use the FHFA Purchase-only State-level House Price Index of Guam. If the single-family mortgage exposure was originated before 1991, use the Enterprise's proprietary housing price index. Use geometric interpolation to convert quarterly housing price index data to monthly data. 300 percent if outside of permissible range or unable to determine.
Mortgage concentration risk.	High, not high	High if unable to determine.

TABLE 1 TO PARAGRAPH (a)—PERMISSIBLE VALUES AND ADDITIONAL INSTRUCTIONS—Continued

Defined term	Permissible values	Additional instructions
MI cancellation feature.	Cancellable mortgage insurance, non-cancellable mortgage insurance.	Cancellable mortgage insurance, if unable to determine.
Occupancy type	Investment, owner-occupied, second home	Investment if unable to determine.
OLTV	0 percent < OLTV ≤ 300 percent	300 percent if outside of permissible range or unable to determine.
Original credit score	300 ≤ original credit score ≤ 850	The original credit score for the single-family mortgage exposure is determined based on the original credit scores of each borrower on the exposure using the following procedure. Determine the borrower credit score for each borrower: • If there are original credit scores from multiple credit repositories for a borrower, the borrower credit score is the mean across the borrower's original credit scores. • If there is only one original credit score for the borrower from one repository, the borrower credit score is the one available original credit score. Determine the original credit score for the single-family mortgage exposure: • If there is only one borrower, the borrower credit score is the original credit score for the single-family mortgage exposure. • If there are multiple borrowers, the lowest borrower credit score across all borrowers is the original credit score for the single-family mortgage exposure. • If a borrower does not have a borrower credit score, determine the original credit score for the single-family mortgage exposure based on the borrower credit scores of the other borrowers on the loan. The original credit score for the single-family mortgage exposure is 680 if the Enterprise has verified that no borrower has a credit score at any of the three repositories. The original credit score for the single-family mortgage exposure is 600 if (i) an Enterprise is unable to determine the original credit score using the above procedure or (ii) the original credit score calculated using the procedure falls outside of the permissible range.
Origination channel	Retail, third-party origination (TPO)	TPO includes broker and correspondent channels. TPO if unable to determine.
Payment change from modification.	−80 percent < payment change from modification < 50 percent	If the single-family mortgage exposure initially had an adjustable or step-rate feature, the monthly payment after a permanent modification is calculated using the initial modified rate. 0 percent if unable to determine. −79 percent if less than or equal to −80 percent. 49 percent if greater than or equal to 50 percent.
Previous maximum days past due.	Non-negative integer	181 months if negative or unable to determine.
Product type	''FRM30'' means a fixed-rate single-family mortgage exposure with an original amortization term greater than 309 months and less than or equal to 429 months. ''FRM20'' means a fixed-rate single-family mortgage exposure with an original amortization term greater than 189 months and less than or equal to 309 months. ''FRM15'' means a fixed-rate single-family mortgage exposure with an original amortization term less than or equal to 189 months. ''ARM1/1'' is an adjustable-rate single-family mortgage exposure that has a mortgage rate and required payment that adjust annually.	Product types other than FRM30, FRM20, FRM15 or ARM 1/1 should be assigned to FRM30. Use the post-modification product type for modified mortgage exposures. ARM 1/1 if unable to determine.
Property type	1-unit, 2–4 units, condominium, manufactured home	Use condominium for cooperatives. 2–4 units if unable to determine.
Refreshed credit score.	300 ≤ refreshed credit score ≤ 850	The refreshed credit score for the single-family mortgage exposure is determined based on the refreshed credit scores of each borrower on the exposure using the following procedure. Determine the borrower credit score for each borrower: • If the Enterprise acquires refreshed credit scores from multiple repositories for a borrower, the borrower credit score is the mean across the borrower's refreshed credit scores. • If the Enterprise acquires only one refreshed credit score for the borrower from one repository, the borrower credit score is the one available refreshed credit score. • If the Enterprise does not acquire refreshed credit scores, the borrower's refreshed credit score is the borrower's most recently available credit score, which could be the borrower's original credit score. Determine the refreshed credit score for the single-family mortgage exposure: • If there is only one borrower, the borrower credit score is the refreshed credit score for the single-family mortgage exposure. • If there are multiple borrowers, the lowest borrower credit score across all borrowers is the refreshed credit score for the single-family mortgage exposure. If a borrower does not have a borrower credit score, determine the refreshed credit score for the single-family mortgage exposure based on the borrower credit scores of the other borrowers on the loan.

TABLE 1 TO PARAGRAPH (a)—PERMISSIBLE VALUES AND ADDITIONAL INSTRUCTIONS—Continued

Defined term	Permissible values	Additional instructions
		• If no refreshed credit scores are available for any borrowers on the loan, then the refreshed credit score for the single-family mortgage exposure is the same as the original credit score for the single-family mortgage exposure.
Streamlined refi	Yes, no	No if unable to determine.
Subordination	0 percent ≤ Subordination ≤ 80 percent	80 percent if outside permissible range.

* * * * *

■ 7. Amend § 1240.34 by:

■ a. Adding in alphabetical order the definition of ''Affordable unit'';

■ b. Adding in alphabetical order the definition of ''Government subsidy'';

■ c. Revising table 1 to paragraph (a); and

■ d. Revising table 4 to paragraph (d).

The additions and revisions read as follows:

§ 1240.34 Multifamily mortgage exposures.

(a) * * *

Affordable unit means a unit within a property securing a multifamily mortgage exposure that can be rented by occupants with income less than or equal to 80 percent of the area median income where the property resides.

* * * * *

Government subsidy means that the property satisfies both of the following criteria:

(1) at least 20 percent of the property's units are restricted to be affordable units; and

(2) the property benefits from one of the following three government programs:

(i) Low Income Housing Tax Credits (LIHTC);

(ii) Section 8 project-based rental assistance; or

(iii) State/Local affordable housing programs that require the provision of affordable housing for the life of the loan.

* * * * *

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Table 1 to paragraph (a)−Permissible Values and Additional Instructions

Defined Term	Permissible Values	Additional Instructions
Acquisition DSCR	Greater than or equal to 0.	Origination DSCR if negative or unable to determine. If origination DSCR is unavailable, use underwriting DSCR. If underwriting DSCR is unavailable, use 1.00.
Acquisition LTV	Greater than or equal to 0.	Origination LTV if negative or unable to determine. If origination LTV is unavailable, use underwriting LTV. If underwriting LTV is unavailable, use 100 percent.
Government Subsidy	Yes, no	Yes if each property securing the multifamily mortgage exposure has a government subsidy. No otherwise.
Interest-only	Yes, no.	Yes if unable to determine.
Loan Term	Non-negative integer in years.	11 years if negative or unable to determine.
MTMDSCR	Greater than or equal to 0.	If the MTMDSCR is unavailable, the last observed DSCR can be marked to market using a property NOI index or an NOI estimate based on rent and expense indices. If the index is not sufficiently granular, either because of its frequency or geography, or with respect to a certain multifamily property type, use a more geographically broad index or a recently estimated mark-to-market value.
MTMLTV	Greater than or equal to 0.	If the MTMLTV is unavailable, mark to market using an index. If the index is not sufficiently granular, either because of its frequency or geography or with respect to a certain multifamily property type, use a more geographically broad index or a recently estimated mark-to-market value.
Net Operating Income (NOI) / Net Cash Flow (NCF)	Greater than or equal to 0.	Infer using origination LTV or origination DSCR if NOI/NCF is unavailable. Alternatively, infer using actual MTMLTV or actual MTMDSCR.
Original Amortization Term	Non-negative integer in years.	31 years if negative or unable to determine.
Original Loan Size	Non-negative dollar value.	$3,000,000 if negative or unable to determine
Payment Performance	Performing, delinquent 60 days or more, re-performing (without modification), modified.	Modified if unable to determine.
Special Product	Not a special product, student housing, rehab/value-add/lease-up, supplemental mortgage exposure.	Rehab/value-add/lease-up if unable to determine.
UPB	UPB > $0	$100,000,000 if negative or unable to determine.

* * * * *

Table 4 to Paragraph (d)—Multifamily Risk Multipliers

Risk Factor	Value or Range	Risk Multiplier
Payment Performance	Performing	1.00
	Delinquent more than 60 days	1.10
	Re-performing (without modification)	1.10
	Modified	1.20
Government Subsidy	No	1.00
	Yes	0.60
Interest-Only	No	1.00
	Yes (during the interest-only period)	1.10
Loan Term	Loan term <= 1Yr	0.70
	1Yr < loan term <= 2Yr	0.75
	2Yr < loan term <= 3Yr	0.80
	3Yr < loan term <= 4Yr	0.85
	4Yr < loan term <= 5Yr	0.90
	5Yr < loan term <= 7Yr	0.95
	7Yr < loan term <= 10Yr	1.00
	Loan term > 10Yr	1.15
Original Amortization Term	Original amortization term <= 20Yr	0.70
	20Yr < original amortization term <= 25Yr	0.80
	25Yr < original amortization term <= 30Yr	1.00
	Original amortization term > 30Yr	1.10
Original Loan Size (in millions)	Loan size <= $2m	1.45
	$2m < loan size <= $3m	1.35
	$3m < loan size <= $4m	1.25
	$4m < loan size <= $5m	1.15
	$5m < loan size <= $6m	1.08
	$6m < loan size <= $7m	1.02
	$7m < loan size <= $8m	0.96
	$8m < loan size <= $9m	0.92
	$9m < loan size <= $10m	0.88
	$10m < loan size <= $11m	0.86
	$11m < loan size <= $12m	0.84
	$12m < loan size <= $13m	0.82
	$13m < loan size <= $14m	0.81
	$14m < loan size <= $15m	0.81
	$15m < loan size <= $22m	0.80
	$22m < loan size <= $23m	0.79
	$23m < loan size <= $24m	0.78
	$24m < loan size <= $25m	0.76
	Loan size >$25m	0.70
Special Products	Not a special product	1.00
	Student housing	1.15
	Rehab/value-add/lease-up	1.25

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■ 8. Amend § 1240.35 by revising paragraphs (b)(3) and (b)(4)(i) to read as follows:

§ 1240.35 Off-balance sheet exposures.

* * * * *

(b) * * *

(3) *50 percent CCF.* An Enterprise must apply a 50 percent CCF to:

(i) The amount of commitments with an original maturity of more than one year that are not unconditionally cancelable by the Enterprise; and

(ii) Guarantees on exposures to the other Enterprise in commingled securities.

(4) * * *

(i) Guarantees, except guarantees included in paragraph (b)(3)(ii) of this section;

* * * * *

■ 9. Revise § 1240.36 to read as follows:

§ 1240.36 Derivative contracts.

(a) *Exposure amount for derivative contracts.* An Enterprise must calculate the exposure amount or EAD for all its

derivative contracts using the standardized approach for counterparty credit risk (SA–CCR) in paragraph (c) of this section for purposes of standardized total risk-weighted assets. An Enterprise must apply the treatment of cleared transactions under § 1240.37 to its derivative contracts that are cleared transactions and to all default fund contributions associated with such derivative contracts for purposes of standardized total risk-weighted assets.

(b) *Methodologies for collateral recognition.* (1) An Enterprise may use the methodologies under § 1240.39 to recognize the benefits of financial collateral in mitigating the counterparty credit risk of repo-style transactions, eligible margin loans, collateralized OTC derivative contracts and single product netting sets of such transactions.

(2) An Enterprise must use the methodology in paragraph (c) of this section to calculate EAD for an OTC derivative contract or a set of OTC derivative contracts subject to a qualifying master netting agreement.

(3) An Enterprise must also use the methodology in paragraph (d) of this section to calculate the risk-weighted asset amounts for CVA for OTC derivatives.

(c) *EAD for derivative contracts*—(1) *Options for determining EAD.* An Enterprise must determine the EAD for a derivative contract using SA–CCR under paragraph (c)(5) of this section. The exposure amount determined under SA–CCR is the EAD for the derivative contract or derivatives contracts. An Enterprise must use the same methodology to calculate the exposure amount for all its derivative contracts. An Enterprise may reduce the EAD calculated according to paragraph (c)(5) of this section by the credit valuation adjustment that the Enterprise has recognized in its balance sheet valuation of any derivative contracts in the netting set. For purposes of this paragraph (c)(1), the credit valuation adjustment does not include any adjustments to common equity tier 1 capital attributable to changes in the fair value of the Enterprise's liabilities that are due to changes in its own credit risk since the inception of the transaction with the counterparty.

(2) *Definitions.* For purposes of paragraph (c) of this section, the following definitions apply:

(i) *End date* means the last date of the period referenced by an interest rate or credit derivative contract or, if the derivative contract references another instrument, by the underlying instrument, except as otherwise provided in paragraph (c) of this section.

(ii) *Start date* means the first date of the period referenced by an interest rate or credit derivative contract or, if the derivative contract references the value of another instrument, by underlying instrument, except as otherwise provided in paragraph (c) of this section.

(iii) *Hedging* set means:

(A) With respect to interest rate derivative contracts, all such contracts within a netting set that reference the same reference currency;

(B) With respect to exchange rate derivative contracts, all such contracts within a netting set that reference the same currency pair;

(C) With respect to credit derivative contract, all such contracts within a netting set;

(D) With respect to equity derivative contracts, all such contracts within a netting set;

(E) With respect to a commodity derivative contract, all such contracts within a netting set that reference one of the following commodity categories: Energy, metal, agricultural, or other commodities;

(F) With respect to basis derivative contracts, all such contracts within a netting set that reference the same pair of risk factors and are denominated in the same currency; or

(G) With respect to volatility derivative contracts, all such contracts within a netting set that reference one of interest rate, exchange rate, credit, equity, or commodity risk factors, separated according to the requirements under paragraphs (c)(2)(iii)(A) through (E) of this section.

(H) If the risk of a derivative contract materially depends on more than one of interest rate, exchange rate, credit, equity, or commodity risk factors, FHFA may require an Enterprise to include the derivative contract in each appropriate hedging set under paragraphs (c)(2)(iii)(A) through (E) of this section.

(3) *Credit derivatives.* Notwithstanding paragraphs (c)(1) and (c)(2) of this section:

(i) An Enterprise that purchases a credit derivative that is recognized under § 1240.38 as a credit risk mitigant for an exposure is not required to calculate a separate counterparty credit risk capital requirement under this section so long as the Enterprise does so consistently for all such credit derivatives and either includes or excludes all such credit derivatives that are subject to a master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(ii) An Enterprise that is the protection provider in a credit derivative must treat the credit derivative as an exposure to the reference obligor and is not required to calculate a counterparty credit risk capital requirement for the credit derivative under this section, so long as it does so consistently for all such credit derivatives and either includes all or excludes all such credit derivatives that are subject to a master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(4) *Equity derivatives.* An Enterprise must treat an equity derivative contract as an equity exposure and compute a risk-weighted asset amount for the equity derivative contract under § 1240.51. In addition, if an Enterprise is treating the contract as a covered position under subpart F of this part, the Enterprise must also calculate a risk-based capital requirement for the counterparty credit risk of an equity derivative contract under this section.

(5) *Exposure amount.* (i) The exposure amount of a netting set, as calculated under paragraph (c) of this section, is equal to 1.4 multiplied by the sum of the replacement cost of the netting set, as calculated under paragraph (c)(6) of this section, and the potential future exposure of the netting set, as calculated under paragraph (c)(7) of this section.

(ii) Notwithstanding the requirements of paragraph (c)(5)(i) of this section, the exposure amount of a netting set subject to a variation margin agreement, excluding a netting set that is subject to a variation margin agreement under which the counterparty to the variation margin agreement is not required to post variation margin, is equal to the lesser of the exposure amount of the netting set calculated under paragraph (c)(5)(i) of this section and the exposure amount of the netting set calculated under paragraph (c)(5)(i) of this section as if the netting set were not subject to a variation margin agreement.

(iii) Notwithstanding the requirements of paragraph (c)(5)(i) of this section, the exposure amount of a netting set that consists of only sold options in which the premiums have been fully paid by the counterparty to the options and where the options are not subject to a variation margin agreement is zero.

(iv) Notwithstanding the requirements of paragraph (c)(5)(i) of this section, the exposure amount of a netting set in which the counterparty is a commercial end-user is equal to the sum of

replacement cost, as calculated under paragraph (c)(6) of this section, and the potential future exposure of the netting set, as calculated under paragraph (c)(7) of this section.

(v) For purposes of the exposure amount calculated under paragraph (c)(5)(i) of this section and all calculations that are part of that exposure amount, an Enterprise may elect to treat a derivative contract that is a cleared transaction that is not subject to a variation margin agreement as one that is subject to a variation margin agreement, if the derivative contract is subject to a requirement that the counterparties make daily cash payments to each other to account for changes in the fair value of the derivative contract and to reduce the net position of the contract to zero. If an Enterprise makes an election under this paragraph (c)(5)(v) for one derivative contract, it must treat all other derivative contracts within the same netting set that are eligible for an election under this paragraph (c)(5)(v) as derivative contracts that are subject to a variation margin agreement.

(vi) For purposes of the exposure amount calculated under paragraph (c)(5)(i) of this section and all calculations that are part of that exposure amount, an Enterprise may elect to treat a credit derivative contract, equity derivative contract, or commodity derivative contract that references an index as if it were multiple derivative contracts each referencing one component of the index.

(6) *Replacement cost of a netting set*—(i) *Netting set subject to a variation margin agreement under which the counterparty must post variation margin.* The replacement cost of a netting set subject to a variation margin agreement, excluding a netting set that is subject to a variation margin agreement under which the counterparty is not required to post variation margin, is the greater of:

(A) The sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set less the sum of the net independent collateral amount and the variation margin amount applicable to such derivative contracts;

(B) The sum of the variation margin threshold and the minimum transfer amount applicable to the derivative contracts within the netting set less the net independent collateral amount applicable to such derivative contracts; or

(C) Zero.

(ii) *Netting sets not subject to a variation margin agreement under which the counterparty must post variation margin.* The replacement cost of a netting set that is not subject to a variation margin agreement under which the counterparty must post variation margin to the Enterprise is the greater of:

(A) The sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set less the sum of the net independent collateral amount and variation margin amount applicable to such derivative contracts; or

(B) Zero.

(iii) *Multiple netting sets subject to a single variation margin agreement.* Notwithstanding paragraphs (c)(6)(i) and (ii) of this section, the replacement cost for multiple netting sets subject to a single variation margin agreement must be calculated according to paragraph (c)(10)(i) of this section.

(iv) *Netting set subject to multiple variation margin agreements or a hybrid netting set.* Notwithstanding paragraphs (c)(6)(i) and (ii) of this section, the replacement cost for a netting set subject to multiple variation margin agreements or a hybrid netting set must be calculated according to paragraph (c)(11)(i) of this section.

(7) *Potential future exposure of a netting set.* The potential future exposure of a netting set is the product of the PFE multiplier and the aggregated amount.

(i) *PFE multiplier.* The PFE multiplier is calculated according to the following formula:

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$$PFE\ multiplier = \min\left(1; 0.05 + 0.95 * e^{\left(\frac{V-C}{1.9*A}\right)}\right)$$

Where:

(A) V is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set;

(B) C is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting set; and

(C) A is the aggregated amount of the netting set.

(ii) *Aggregated amount.* The aggregated amount is the sum of all hedging set amounts, as calculated under paragraph (c)(8) of this section, within a netting set.

(iii) *Multiple netting sets subject to a single variation margin agreement.* Notwithstanding paragraphs (c)(7)(i) and (ii) of this section and when calculating the potential future exposure for purposes of adjusted total assets, the potential future exposure for multiple netting sets subject to a single variation margin agreement must be calculated according to paragraph (c)(10)(ii) of this section.

(iv) *Netting set subject to multiple variation margin agreements or a hybrid netting set.* Notwithstanding paragraphs (c)(7)(i) and (ii) of this section and when calculating the potential future exposure for purposes of adjusted total assets, the potential future exposure for a netting set subject to multiple variation margin agreements or a hybrid netting set must be calculated according to paragraph (c)(11)(ii) of this section.

(8) *Hedging set amount*—(i) *Interest rate derivative contracts.* To calculate the hedging set amount of an interest rate derivative contract hedging set, an Enterprise may use either of the formulas provided in paragraphs (c)(8)(i)(A) and (B) of this section:

(A) Formula 1 is as follows:

$$Hedging\ set\ amount = [(AddOn_{TB1}{}^{IR})^2 + AddOn_{TB2}{}^{IR})^2 + 1.4 * AddOn_{TB1}{}^{IR} * AddOn_{TB2}{}^{IR} + 1.4 * AddOn_{TB2}{}^{IR} * AddOn_{TB3}{}^{IR} + 0.6 * AddOn_{TB1}{}^{IR} * AddOn_{TB3}{}^{IR}]^{1/2};\ \text{or}$$

(B) Formula 2 is as follows:

$$Hedging\ set\ amount = |AddOn_{TB1}{}^{IR}| + |AddOn_{TB2}{}^{IR}| + |AddOn_{TB3}{}^{IR}|.$$

Where in paragraphs (c)(8)(i)(A) and (B) of this section:

(1) $AddOn_{TB1}{}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of less than one year from the present date;

(2) $AddOn_{TB2}{}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of one to five years from the present date; and

(3) $AddOn_{TB3}{}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of more than five years from the present date.

(ii) *Exchange rate derivative contracts.* For an exchange rate

derivative contract hedging set, the hedging set amount equals the absolute value of the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set.

(iii) *Credit derivative contracts and equity derivative contracts.* The hedging set amount of a credit derivative contract hedging set or equity derivative contract hedging set within a netting set is calculated according to the following formula:

$$Hedging\ set\ amount = \left[\left(\sum_{k=1}^{K} \rho_k * AddOn(Ref_k)\right)^2 + \sum_{k=1}^{K} (1-(\rho_k)^2) * \left(AddOn(Ref_k)\right)^2\right]^{\frac{1}{2}}$$

Where:

(A) k is each reference entity within the hedging set.

(B) K is the number of reference entities within the hedging set.

(C) $AddOn(Ref_k)$ equals the sum of the adjusted derivative contract amounts, as determined under paragraph (c)(9) of this section, for all derivative contracts within the hedging set that reference reference entity k.

(D) ρ_k equals the applicable supervisory correlation factor, as provided in table 2 to paragraph (c)(11)(ii)(B)(*2*).

(iv) *Commodity derivative contracts.* The hedging set amount of a commodity derivative contract hedging set within a netting set is calculated according to the following formula:

$$Hedging\ set\ amount = \left[\left(\rho * \sum_{k=1}^{K} AddOn(Type_k)\right)^2 + (1-(\rho)^2) * \sum_{k=1}^{K} \left(AddOn(Type_k)\right)^2\right]^{\frac{1}{2}}$$

Where:

(A) k is each commodity type within the hedging set.

(B) K is the number of commodity types within the hedging set.

(C) $AddOn(Type_k)$ equals the sum of the adjusted derivative contract amounts, as determined under paragraph (c)(9) of this section, for all derivative contracts within the hedging set that reference reference commodity type.

(D) ρ equals the applicable supervisory correlation factor, as provided in table 2 to paragraph (c)(11)(ii)(B)(*2*).

(v) *Basis derivative contracts and volatility derivative contracts.* Notwithstanding paragraphs (c)(8)(i) through (iv) of this section, an Enterprise must calculate a separate hedging set amount for each basis derivative contract hedging set and each volatility derivative contract hedging set. An Enterprise must calculate such hedging set amounts using one of the formulas under paragraphs (c)(8)(i) through (iv) that corresponds to the primary risk factor of the hedging set being calculated.

(9) *Adjusted derivative contract amount*—(i) *Summary.* To calculate the adjusted derivative contract amount of a derivative contract, an Enterprise must determine the adjusted notional amount of derivative contract, pursuant to paragraph (c)(9)(ii) of this section, and multiply the adjusted notional amount by each of the supervisory delta adjustment, pursuant to paragraph (c)(9)(iii) of this section, the maturity factor, pursuant to paragraph (c)(9)(iv) of this section, and the applicable supervisory factor, as provided in table 2 to paragraph (c)(11)(ii)(B)(*2*).

(ii) *Adjusted notional amount.* (A)(*1*) For an interest rate derivative contract or a credit derivative contract, the adjusted notional amount equals the product of the notional amount of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation, and the supervisory duration, as calculated by the following formula:

$$Supervisory\ duration = max\left\{\frac{e^{-0.05*\left(\frac{S}{250}\right)} - e^{-0.05*\left(\frac{E}{250}\right)}}{0.05}, 0.04\right\}$$

Where:

(i) S is the number of business days from the present day until the start date of the derivative contract, or zero if the start date has already passed; and

(ii) E is the number of business days from the present day until the end date of the derivative contract.

(*2*) For purposes of paragraph (c)(9)(ii)(A)(*1*) of this section:

(*i*) For an interest rate derivative contract or credit derivative contract that is a variable notional swap, the notional amount is equal to the time-weighted average of the contractual notional amounts of such a swap over the remaining life of the swap; and

(*ii*) For an interest rate derivative contract or a credit derivative contract that is a leveraged swap, in which the notional amount of all legs of the derivative contract are divided by a factor and all rates of the derivative contract are multiplied by the same factor, the notional amount is equal to the notional amount of an equivalent unleveraged swap.

(B)(*1*) For an exchange rate derivative contract, the adjusted notional amount is the notional amount of the non-U.S. denominated currency leg of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation. If both legs of the exchange rate derivative contract are denominated in currencies other than U.S. dollars, the adjusted notional amount of the derivative contract is the largest leg of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation.

(*2*) Notwithstanding paragraph (c)(9)(ii)(B)(*1*) of this section, for an exchange rate derivative contract with

multiple exchanges of principal, the Enterprise must set the adjusted notional amount of the derivative contract equal to the notional amount of the derivative contract multiplied by the number of exchanges of principal under the derivative contract.

(C)(*1*) For an equity derivative contract or a commodity derivative contract, the adjusted notional amount is the product of the fair value of one unit of the reference instrument underlying the derivative contract and the number of such units referenced by the derivative contract.

(*2*) Notwithstanding paragraph (c)(9)(ii)(C)(*1*) of this section, when calculating the adjusted notional amount for an equity derivative contract or a commodity derivative contract that is a volatility derivative contract, the Enterprise must replace the unit price with the underlying volatility referenced by the volatility derivative contract and replace the number of units with the notional amount of the volatility derivative contract.

(iii) *Supervisory delta adjustments.* (A) For a derivative contract that is not an option contract or collateralized debt obligation tranche, the supervisory delta adjustment is 1 if the fair value of the derivative contract increases when the value of the primary risk factor increases and −1 if the fair value of the derivative contract decreases when the value of the primary risk factor increases.

(B)(*1*) For a derivative contract that is an option contract, the supervisory delta adjustment is determined by the following formulas, as applicable:

Table 1 to paragraph (c)(9)(iii)(B)(*1*)−Supervisory Delta Adjustment for Options Contracts

	Bought	Sold
Call Options	$\Phi\left(\frac{ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$	$-\Phi\left(\frac{ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$
Put Options	$-\Phi\left(-\frac{ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$	$\Phi\left(-\frac{ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$

(*2*) As used in the formulas in table 1 to paragraph (c)(9)(iii)(B)(*1*):

(*i*) Φ is the standard normal cumulative distribution function;

(*ii*) P equals the current fair value of the instrument or risk factor, as applicable, underlying the option;

(*iii*) K equals the strike price of the option;

(*iv*) T equals the number of business days until the latest contractual exercise date of the option;

(*v*) λ equals zero for all derivative contracts except interest rate options for the currencies where interest rates have negative values. The same value of λ must be used for all interest rate options that are denominated in the same currency. To determine the value of λ for a given currency, an Enterprise must find the lowest value L of P and K of all interest rate options in a given currency that the Enterprise has with all counterparties. Then, λ is set according to this formula:

$\lambda = \max\{-L + 0.1\%, 0\}$; and

(*vi*) σ equals the supervisory option volatility, as provided in table 2 to paragraph (c)(11)(ii)(B)(*2*).

(C)(*1*) For a derivative contract that is a collateralized debt obligation tranche, the supervisory delta adjustment is determined by the following formula:

$$\text{Supervisory Delta Adjustment} = \frac{15}{(1+14*A)*(1+14*D)}$$

(*2*) As used in the formula in paragraph (c)(9)(iii)(C)(1) of this section:

(*i*) A is the attachment point, which equals the ratio of the notional amounts of all underlying exposures that are subordinated to the Enterprise's exposure to the total notional amount of all underlying exposures, expressed as a decimal value between zero and one; [1]

(*ii*) D is the detachment point, which equals one minus the ratio of the notional amounts of all underlying exposures that are senior to the Enterprise's exposure to the total notional amount of all underlying exposures, expressed as a decimal value between zero and one; and

(*iii*) The resulting amount is designated with a positive sign if the collateralized debt obligation tranche was purchased by the Enterprise and is designated with a negative sign if the collateralized debt obligation tranche was sold by the Enterprise.

(iv) *Maturity factor.* (A)(*1*) The maturity factor of a derivative contract that is subject to a variation margin agreement, excluding derivative contracts that are subject to a variation margin agreement under which the counterparty is not required to post variation margin, is determined by the following formula:

[1] In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the Enterprise's exposure. In the case of a second-or-subsequent-to-default credit derivative, the smallest (n − 1) notional amounts of the underlying exposures are subordinated to the Enterprise's exposure.

$$\text{Maturity factor} = \frac{3}{2}\sqrt{\frac{\text{MPOR}}{250}}$$

Where Margin Period of Risk (MPOR) refers to the period from the most recent exchange of collateral covering a netting set of derivative contracts with a defaulting counterparty until the derivative contracts are closed out and the resulting market risk is re-hedged.

(*2*) Notwithstanding paragraph (c)(9)(iv)(A)(*1*) of this section:

(*i*) For a derivative contract that is not a client-facing derivative transaction, MPOR cannot be less than ten business days plus the periodicity of re-margining expressed in business days minus one business day;

(*ii*) For a derivative contract that is a client-facing derivative transaction, cannot be less than five business days plus the periodicity of re-margining expressed in business days minus one business day; and

(*iii*) For a derivative contract that is within a netting set that is composed of more than 5,000 derivative contracts that are not cleared transactions, or a netting set that contains one or more trades involving illiquid collateral or a derivative contract that cannot be easily replaced, MPOR cannot be less than twenty business days.

(*3*) Notwithstanding paragraphs (c)(9)(iv)(A)(*1*) and (*2*) of this section, for a netting set subject to more than two outstanding disputes over margin that lasted longer than the MPOR over the previous two quarters, the applicable floor is twice the amount provided in paragraphs (c)(9)(iv)(A)(*1*) and (*2*) of this section.

(B) The maturity factor of a derivative contract that is not subject to a variation margin agreement, or derivative contracts under which the counterparty is not required to post variation margin, is determined by the following formula:

$$\text{Maturity factor} = \sqrt{\frac{\min(M; 250)}{250}}$$

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Where M equals the greater of 10 business days and the remaining maturity of the contract, as measured in business days.

(C) For purposes of paragraph (c)(9)(iv) of this section, if an Enterprise has elected pursuant to paragraph (c)(5)(v) of this section to treat a derivative contract that is a cleared transaction that is not subject to a variation margin agreement as one that is subject to a variation margin agreement, the Enterprise must treat the derivative contract as subject to a variation margin agreement with maturity factor as determined according to (c)(9)(iv)(A) of this section, and daily settlement does not change the end date of the period referenced by the derivative contract.

(v) *Derivative contract as multiple effective derivative contracts.* An Enterprise must separate a derivative contract into separate derivative contracts, according to the following rules:

(A) For an option where the counterparty pays a predetermined amount if the value of the underlying asset is above or below the strike price and nothing otherwise (binary option), the option must be treated as two separate options. For purposes of paragraph (c)(9)(iii)(B) of this section, a binary option with strike K must be represented as the combination of one bought European option and one sold European option of the same type as the original option (put or call) with the strikes set equal to 0.95 * K and 1.05 * K so that the payoff of the binary option is reproduced exactly outside the region between the two strikes. The absolute value of the sum of the adjusted derivative contract amounts of the bought and sold options is capped at the payoff amount of the binary option.

(B) For a derivative contract that can be represented as a combination of standard option payoffs (such as collar, butterfly spread, calendar spread, straddle, and strangle), an Enterprise must treat each standard option component as a separate derivative contract.

(C) For a derivative contract that includes multiple-payment options, (such as interest rate caps and floors), an Enterprise may represent each payment option as a combination of effective single-payment options (such as interest rate caplets and floorlets).

(D) An Enterprise may not decompose linear derivative contracts (such as swaps) into components.

(10) *Multiple netting sets subject to a single variation margin agreement*—(i) *Calculating replacement cost.* Notwithstanding paragraph (c)(6) of this section, an Enterprise shall assign a single replacement cost to multiple netting sets that are subject to a single variation margin agreement under which the counterparty must post variation margin, calculated according to the following formula:

$$\textit{Replacement Cost} = max\{\Sigma_{NS} max\{V_{NS}; 0\} - max\{C_{MA}; 0\}; 0\} + max\{\Sigma_{NS} min\{V_{NS}; 0\} - min\{C_{MA}; 0\}; 0\}$$

Where:

(A) NS is each netting set subject to the variation margin agreement MA;

(B) V_{NS} is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set NS; and

(C) C_{MA} is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting sets subject to the single variation margin agreement.

(ii) *Calculating potential future exposure.* Notwithstanding paragraph (c)(5) of this section, an Enterprise shall assign a single potential future exposure to multiple netting sets that are subject to a single variation margin agreement under which the counterparty must post variation margin equal to the sum of the potential future exposure of each such netting set, each calculated according to paragraph (c)(7) of this section as if such nettings sets were not subject to a variation margin agreement.

(11) *Netting set subject to multiple variation margin agreements or a hybrid netting set*—(i) *Calculating replacement cost.* To calculate replacement cost for either a netting set subject to multiple variation margin agreements under which the counterparty to each variation margin agreement must post variation margin, or a netting set composed of at least one derivative contract subject to variation margin agreement under which the counterparty must post variation margin and at least one derivative contract that is not subject to such a variation margin

agreement, the calculation for replacement cost is provided under paragraph (c)(6)(i) of this section, except that the variation margin threshold equals the sum of the variation margin thresholds of all variation margin agreements within the netting set and the minimum transfer amount equals the sum of the minimum transfer amounts of all the variation margin agreements within the netting set.

(ii) *Calculating potential future exposure.* (A) To calculate potential future exposure for a netting set subject to multiple variation margin agreements under which the counterparty to each variation margin agreement must post variation margin, or a netting set composed of at least one derivative contract subject to variation margin agreement under which the counterparty to the derivative contract must post variation margin and at least one derivative contract that is not subject to such a variation margin agreement, an Enterprise must divide the netting set into sub-netting sets (as described in paragraph (c)(11)(ii)(B) of this section) and calculate the aggregated amount for each sub-netting set. The aggregated amount for the netting set is calculated as the sum of the aggregated amounts for the sub-netting sets. The multiplier is calculated for the entire netting set.

(B) For purposes of paragraph (c)(11)(ii)(A) of this section, the netting set must be divided into sub-netting sets as follows:

(*1*) All derivative contracts within the netting set that are not subject to a variation margin agreement or that are subject to a variation margin agreement under which the counterparty is not required to post variation margin form a single sub-netting set. The aggregated amount for this sub-netting set is calculated as if the netting set is not subject to a variation margin agreement.

(*2*) All derivative contracts within the netting set that are subject to variation margin agreements in which the counterparty must post variation margin and that share the same value of the MPOR form a single sub-netting set. The aggregated amount for this sub-netting set is calculated as if the netting set is subject to a variation margin agreement, using the MPOR value shared by the derivative contracts within the netting set.

TABLE 2 TO PARAGRAPH (c)(11)(ii)(B)(*2*)—SUPERVISORY OPTION VOLATILITY, SUPERVISORY CORRELATION PARAMETERS, AND SUPERVISORY FACTORS FOR DERIVATIVE CONTRACTS

Asset class	Category	Type	Supervisory option volatility (percent)	Supervisory correlation factor (percent)	Supervisory factor [1] (percent)
Interest rate	N/A	N/A	50	N/A	0.50
Exchange rate	N/A	N/A	15	N/A	4.0
Credit, single name	Investment grade	N/A	100	50	0.46
	Speculative grade	N/A	100	50	1.3
	Sub-speculative grade	N/A	100	50	6.0
Credit, index	Investment Grade	N/A	80	80	0.38
	Speculative Grade	N/A	80	80	1.06
Equity, single name	N/A	N/A	120	50	32
Equity, index	N/A	N/A	75	80	20
Commodity	Energy	Electricity	150	40	40
		Other	70	40	18
	Metals	N/A	70	40	18
	Agricultural	N/A	70	40	18
	Other	N/A	70	40	18

[1] The applicable supervisory factor for basis derivative contract hedging sets is equal to one-half of the supervisory factor provided in this table 2, and the applicable supervisory factor for volatility derivative contract hedging sets is equal to 5 times the supervisory factor provided in this table 2.

(d) *Credit valuation adjustment (CVA) risk-weighted assets*—(1) *In general.* With respect to its OTC derivative contracts, an Enterprise must calculate a CVA risk-weighted asset amount for its portfolio of OTC derivative transactions that are subject to the CVA capital requirement using the simple CVA approach described in paragraph (d)(5) of this section.

(2) [Reserved]

(3) *Recognition of hedges.* (i) An Enterprise may recognize a single name CDS, single name contingent CDS, any other equivalent hedging instrument that references the counterparty directly, and index credit default swaps (CDS_{ind}) as a CVA hedge under paragraph (d)(5)(ii) of this section or paragraph (d)(6) of this section, provided that the position is managed as a CVA hedge in accordance with the Enterprise's hedging policies.

(ii) An Enterprise shall not recognize as a CVA hedge any tranched or n^{th}-to-default credit derivative.

(4) *Total CVA risk-weighted assets.* Total CVA risk-weighted assets is the CVA capital requirement, K_{CVA}, calculated for an Enterprise's entire portfolio of OTC derivative counterparties that are subject to the CVA capital requirement, multiplied by 12.5.

(5) *Simple CVA approach.* (i) Under the simple CVA approach, the CVA capital requirement, K_{CVA}, is calculated according to the following formula:

$$K_{CVA} = 2.33 \times \sqrt{\left(\sum_i 0.5 \times w_i \times \left(M_i \times EAD_i^{total} - M_i^{hedge} \times B_i\right) - \sum_{ind} w_{ind} \times M_{ind} \times B_{ind}\right)^2 + A}$$

Where:

$$A = \sum_i 0.75 \times w_i^2 \times \left(M_i \times EAD_i^{total} - M_i^{hedge} \times B_i\right)^2$$

(A) w_i = the weight applicable to counterparty i under table 3 to paragraph (d)(5)(ii);

(B) M_i = the EAD-weighted average of the effective maturity of each netting set with counterparty i (where each netting set's effective maturity can be no less than one year.)

(C) EAD_i^{total} = the sum of the EAD for all netting sets of OTC derivative contracts with counterparty i calculated using the standardized approach to counterparty credit risk described in paragraph (c) of this section. When the Enterprise calculates EAD under paragraph (c) of this section, such EAD may be adjusted for purposes of calculating EAD_i^{total} by multiplying EAD by $(1\text{-}\exp(-0.05 \times M_i))/(0.05 \times M_i)$, where ''exp'' is the exponential function.

(D) M_i^{hedge} = the notional weighted average maturity of the hedge instrument.

(E) B_i = the sum of the notional amounts of any purchased single name CDS referencing counterparty i that is used to hedge CVA risk to counterparty i multiplied by $(1\text{-}\exp(-0.05 \times M_i^{hedge}))/(0.05 \times M_i^{hedge})$.

(F) M_{ind} = the maturity of the CDS_{ind} or the notional weighted average maturity of any CDS_{ind} purchased to hedge CVA risk of counterparty i.

(G) B_{ind} = the notional amount of one or more CDS_{ind} purchased to hedge CVA risk for counterparty i multiplied by $(1\text{-}\exp(-0.05 \times M_{ind}))/(0.05 \times M_{ind})$

(H) w_{ind} = the weight applicable to the CDS_{ind} based on the average weight of the underlying reference names that comprise the index under table 3 to paragraph (d)(5)(ii).

(ii) The Enterprise may treat the notional amount of the index attributable to a counterparty as a single name hedge of counterparty i (B_i,) when calculating K_{CVA}, and subtract the notional amount of B_i from the notional amount of the CDS_{ind}. An Enterprise must treat the CDS_{ind} hedge with the notional amount reduced by B_i as a CVA hedge.

TABLE 3 TO PARAGRAPH (d)(5)(ii)—ASSIGNMENT OF COUNTERPARTY WEIGHT

Internal PD (in percent)	Weight w_i (in percent)
0.00–0.07	0.70
>0.070–0.15	0.80
>0.15–0.40	1.00
>0.40–2.00	2.00
>2.00–6.00	3.00
>6.00	10.00

■ 10. Revise § 1240.37 to read as follows:

§ 1240.37 Cleared transactions.

(a) *General requirements*—(1) *Clearing member clients.* An Enterprise that is a clearing member client must use the methodologies described in paragraph (b) of this section to calculate risk-weighted assets for a cleared transaction.

(2) *Clearing members.* An Enterprise that is a clearing member must use the methodologies described in paragraph (c) of this section to calculate its risk-weighted assets for a cleared transaction and paragraph (b) of this section to calculate its risk-weighted assets for its default fund contribution to a CCP.

(b) *Clearing member client Enterprises*—(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, an Enterprise that is a clearing member client must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (b)(2) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (b)(3) of this section.

(ii) A clearing member client Enterprise's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount.* (i) For a cleared transaction that is a derivative contract or a netting set of derivative contracts, trade exposure amount equals the EAD for the derivative contract or netting set of derivative contracts calculated using the methodology used to calculate EAD for derivative contracts set forth in § 1240.36(c), plus the fair value of the collateral posted by the clearing member client Enterprise and held by the CCP or a clearing member in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD for the repo-style transaction calculated using the methodology set forth in § 1240.39(b)(2) or (3), plus the fair value of the collateral posted by the clearing member client Enterprise and held by the CCP or a clearing member in a manner that is not bankruptcy remote.

(3) *Cleared transaction risk weights.* (i) For a cleared transaction with a QCCP, a clearing member client Enterprise must apply a risk weight of:

(A) 2 percent if the collateral posted by the Enterprise to the QCCP or clearing member is subject to an arrangement that prevents any loss to the clearing member client Enterprise due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clearing member clients of the clearing member; and the clearing member client Enterprise has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from an event of default or from liquidation, insolvency, or receivership proceedings) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions.

(B) 4 percent, if the requirements of paragraph (b)(3)(i)(A) of this section are not met.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client Enterprise must apply the risk weight applicable to the CCP under this subpart D.

(4) *Collateral.* (i) Notwithstanding any other requirement of this section, collateral posted by a clearing member client Enterprise that is held by a custodian (in its capacity as a custodian) in a manner that is bankruptcy remote from the CCP, clearing member, and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

(ii) A clearing member client Enterprise must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D, as applicable.

(c) *Clearing member Enterprise*—(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a clearing member

Enterprise must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (c)(2) of this section by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (c)(3) of this section.

(ii) A clearing member Enterprise's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount.* A clearing member Enterprise must calculate its trade exposure amount for a cleared transaction as follows:

(i) For a cleared transaction that is a derivative contract or a netting set of derivative contracts, trade exposure amount equals the EAD calculated using the methodology used to calculate EAD for derivative contracts set forth in § 1240.36(c), plus the fair value of the collateral posted by the clearing member Enterprise and held by the CCP in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD calculated under § 1240.39(b)(2) or (3), plus the fair value of the collateral posted by the clearing member Enterprise and held by the CCP in a manner that is not bankruptcy remote.

(3) *Cleared transaction risk weights.* (i) A clearing member Enterprise must apply a risk weight of 2 percent to the trade exposure amount for a cleared transaction with a QCCP.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member Enterprise must apply the risk weight applicable to the CCP according to this subpart D.

(iii) Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, a clearing member Enterprise may apply a risk weight of zero percent to the trade exposure amount for a cleared transaction with a QCCP where the clearing member Enterprise is acting as a financial intermediary on behalf of a clearing member client, the transaction offsets another transaction that satisfies the requirements set forth in § 1240.3(a), and the clearing member Enterprise is not obligated to reimburse the clearing member client in the event of the QCCP default.

(4) *Collateral.* (i) Notwithstanding any other requirement of this section, collateral posted by a clearing member Enterprise that is held by a custodian (in its capacity as a custodian) in a manner that is bankruptcy remote from the CCP, clearing member, and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

(ii) A clearing member Enterprise must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D.

(d) *Default fund contributions*—(1) *General requirement.* A clearing member Enterprise must determine the risk-weighted asset amount for a default fund contribution to a CCP at least quarterly, or more frequently if, in the opinion of the Enterprise or FHFA, there is a material change in the financial condition of the CCP.

(2) *Risk-weighted asset amount for default fund contributions to nonqualifying CCPs.* A clearing member Enterprise's risk-weighted asset amount for default fund contributions to CCPs that are not QCCPs equals the sum of such default fund contributions multiplied by 1,250 percent, or an amount determined by FHFA, based on factors such as size, structure, and membership characteristics of the CCP and riskiness of its transactions, in cases where such default fund contributions may be unlimited.

(3) *Risk-weighted asset amount for default fund contributions to QCCPs.* A clearing member Enterprise's risk-weighted asset amount for default fund contributions to QCCPs equals the sum of its capital requirement, K_{CM} for each QCCP, as calculated under the methodology set forth in paragraph (d)(4) of this section, multiplied by 12.5.

(4) *Capital requirement for default fund contributions to a QCCP.* A clearing member Enterprise's capital requirement for its default fund contribution to a QCCP (K_{CM}) is equal to:

$$K_{CM} = \max\left\{K_{CCP} * \left(\frac{DF^{pref}}{DF_{CCP} + DF^{pref}_{CCPCM}}\right); 0.16\ percent * DF^{pref}\right\}$$

Where:

(i) K_{CCP} is the hypothetical capital requirement of the QCCP, as determined under paragraph (d)(5) of this section;

(ii) DF^{pref} is prefunded default fund contribution of the clearing member Enterprise to the QCCP;

(iii) DF_{CCP} is the QCCP's own prefunded amount that are contributed to the default waterfall and are junior or pari passu with prefunded default fund contributions of clearing members of the QCCP; and

(iv) DF^{pref}_{CCPCM} is the total prefunded default fund contributions from clearing members of the QCCP to the QCCP.

(5) *Hypothetical capital requirement of a QCCP.* Where a QCCP has provided its K_{CCP}, an Enterprise must rely on such disclosed figure instead of calculating K_{CCP} under this paragraph (d)(5), unless the Enterprise determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP. The hypothetical capital requirement of a QCCP (K_{CCP}), as determined by the Enterprise, is equal to:

$K_{CCP} = \Sigma CM_i\ EAD_i * 1.6\ percent$

Where:

(i) CM_i is each clearing member of the QCCP; and

(ii) EAD_i is the exposure amount of the QCCP to each clearing member of the QCCP, as determined under paragraph (d)(6) of this section.

(6) *EAD of a QCCP to a clearing member.* (i) The EAD of a QCCP to a clearing member is equal to the sum of the EAD for derivative contracts determined under paragraph (d)(6)(ii) of this section and the EAD for repo-style transactions determined under paragraph (d)(6)(iii) of this section.

(ii) With respect to any derivative contracts between the QCCP and the clearing member that are cleared transactions and any guarantees that the clearing member has provided to the QCCP with respect to performance of a clearing member client on a derivative contract, the EAD is equal to the exposure amount of the QCCP to the clearing member for all such derivative contracts and guarantees of derivative contracts calculated under SA–CCR in § 1240.36(c) (or, with respect to a QCCP located outside the United States, under a substantially identical methodology in effect in the jurisdiction) using a value of 10 business days for purposes of § 1240.36(c)(9)(iv); less the value of all collateral held by the QCCP posted by the clearing member or a client of the clearing member in connection with a derivative contract for which the

clearing member has provided a guarantee to the QCCP and the amount of the prefunded default fund contribution of the clearing member to the QCCP.

(iii) With respect to any repo-style transactions between the QCCP and a clearing member that are cleared transactions, EAD is equal to:

$$EAD_i = \max\{EBRM_i - IM_i - DF_i; 0\}$$

Where:

(A) $EBRM_i$ is the exposure amount of the QCCP to each clearing member for all repo-style transactions between the QCCP and the clearing member, as determined under § 1240.39(b)(2) and without recognition of the initial margin collateral posted by the clearing member to the QCCP with respect to the repo-style transactions or the prefunded default fund contribution of the clearing member institution to the QCCP;

(B) IM_i is the initial margin collateral posted by each clearing member to the QCCP with respect to the repo-style transactions; and

(C) DF_i is the prefunded default fund contribution of each clearing member to the

(D) QCCP that is not already deducted in paragraph (d)(6)(ii) of this section.

(iv) EAD must be calculated separately for each clearing member's sub-client accounts and sub-house account (*i.e.,* for the clearing member's proprietary activities). If the clearing member's collateral and its client's collateral are held in the same default fund contribution account, then the EAD of that account is the sum of the EAD for the client-related transactions within the account and the EAD of the house-related transactions within the account. For purposes of determining such EADs, the independent collateral of the clearing member and its client must be allocated in proportion to the respective total amount of independent collateral posted by the clearing member to the QCCP.

(v) If any account or sub-account contains both derivative contracts and repo-style transactions, the EAD of that account is the sum of the EAD for the derivative contracts within the account and the EAD of the repo-style transactions within the account. If independent collateral is held for an account containing both derivative contracts and repo-style transactions, then such collateral must be allocated to the derivative contracts and repo-style transactions in proportion to the respective product specific exposure amounts, calculated, excluding the effects of collateral, according to § 1240.39(b) for repo-style transactions and to § 1240.36(c)(5) for derivative contracts.

■ 11. Revise § 1240.39 to read as follows:

§ 1240.39 Collateralized transactions.

(a) *General.* (1) An Enterprise may use the following methodologies to recognize the benefits of financial collateral (other than with respect to a retained CRT exposure) in mitigating the counterparty credit risk of repo-style transactions, eligible margin loans, collateralized OTC derivative contracts and single product netting sets of such transactions:

(i) The collateral haircut approach set forth in paragraph (b)(2) of this section; and

(ii) For single product netting sets of repo-style transactions and eligible margin loans, the simple VaR methodology set forth in paragraph (b)(3) of this section.

(2) An Enterprise may use any combination of the two methodologies for collateral recognition; however, it must use the same methodology for similar exposures or transactions.

(b) *EAD for eligible margin loans and repo-style transactions*—(1) *General.* An Enterprise may recognize the credit risk mitigation benefits of financial collateral that secures an eligible margin loan, repo-style transaction, or single-product netting set of such transactions by determining the EAD of the exposure using:

(i) The collateral haircut approach described in paragraph (b)(2) of this section; or

(ii) For netting sets only, the simple VaR methodology described in paragraph (b)(3) of this section.

(2) *Collateral haircut approach*—(i) *EAD equation.* An Enterprise may determine EAD for an eligible margin loan, repo-style transaction, or netting set by setting EAD equal to

$$\max\{0, [(\Sigma E - \Sigma C) + \Sigma(E_s \times H_s) + \Sigma(E_{fx} \times H_{fx})]\},$$

Where:

(A) ΣE equals the value of the exposure (the sum of the current fair values of all instruments, gold, and cash the Enterprise has lent, sold subject to repurchase, or posted as collateral to the counterparty under the transaction (or netting set));

(B) ΣC equals the value of the collateral (the sum of the current fair values of all instruments, gold, and cash the Enterprise has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction (or netting set));

(C) E_s equals the absolute value of the net position in a given instrument or in gold (where the net position in a given instrument or in gold equals the sum of the current fair values of the instrument or gold the Enterprise has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current fair values of that same instrument or gold the Enterprise has borrowed, purchased subject to resale, or taken as collateral from the counterparty);

(D) H_s equals the market price volatility haircut appropriate to the instrument or gold referenced in E_s;

(E) E_{fx} equals the absolute value of the net position of instruments and cash in a currency that is different from the settlement currency (where the net position in a given currency equals the sum of the current fair values of any instruments or cash in the currency the Enterprise has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current fair values of any instruments or cash in the currency the Enterprise has borrowed, purchased subject to resale, or taken as collateral from the counterparty); and

(F) H_{fx} equals the haircut appropriate to the mismatch between the currency referenced in E_{fx} and the settlement currency.

(ii) *Standard supervisory haircuts.* Under the standard supervisory haircuts approach:

(A) An Enterprise must use the haircuts for market price volatility (H_s) in table 1 to paragraph (b)(2)(ii)(A) as adjusted in certain circumstances as provided in paragraphs (b)(2)(ii)(C) and (D) of this section;

TABLE 1 TO PARAGRAPH (b)(2)(ii)(A)—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS [1]

Residual maturity	Haircut (in percent) assigned based on:						Investment grade securitization exposures (in percent)
	Sovereign issuers risk weight under § 1240.32 [2] (in percent)			Non-sovereign issuers risk weight under § 1240.32 (in percent)			
	Zero	20 or 50	100	20	50	100	
Less than or equal to 1 year	0.5	1.0	15.0	1.0	2.0	4.0	4.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0	15.0	4.0	6.0	8.0	12.0
Greater than 5 years	4.0	6.0	15.0	8.0	12.0	16.0	24.0
Main index equities (including convertible bonds) and gold	15.0						
Other publicly traded equities (including convertible bonds)	25.0						
Mutual funds	Highest haircut applicable to any security in which the fund can invest.						
Cash collateral held	Zero						
Other exposure types	25.0						

[1] The market price volatility haircuts in this table 1 are based on a 10 business-day holding period.
[2] Includes a foreign PSE that receives a zero percent risk weight.

(B) For currency mismatches, an Enterprise must use a haircut for foreign exchange rate volatility (H_{fx}) of 8 percent, as adjusted in certain circumstances as provided in paragraphs (b)(2)(ii)(C) and (D) of this section.

(C) For repo-style transactions and client-facing derivative transactions, an Enterprise may multiply the supervisory haircuts provided in paragraphs (b)(2)(ii)(A) and (B) of this section by the square root of ½ (which equals 0.707107). If the Enterprise determines that a longer holding period is appropriate for client-facing derivative transactions, then it must use a larger scaling factor to adjust for the longer holding period pursuant to paragraph (b)(2)(ii)(F) of this section.

(D) An Enterprise must adjust the supervisory haircuts upward on the basis of a holding period longer than ten business days (for eligible margin loans) or five business days (for repo-style transactions), using the formula provided in paragraph (b)(2)(ii)(F) of this section where the conditions in this paragraph (b)(2)(ii)(D) apply. If the number of trades in a netting set exceeds 5,000 at any time during a quarter, an Enterprise must adjust the supervisory haircuts upward on the basis of a minimum holding period of twenty business days for the following quarter (except when an Enterprise is calculating EAD for a cleared transaction under § 1240.37). If a netting set contains one or more trades involving illiquid collateral, an Enterprise must adjust the supervisory haircuts upward on the basis of a minimum holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted longer than the holding period, then the Enterprise must adjust the supervisory haircuts upward for that netting set on the basis of a minimum holding period that is at least two times the minimum holding period for that netting set.

(E)(*1*) An Enterprise must adjust the supervisory haircuts upward on the basis of a holding period longer than ten business days for collateral associated with derivative contracts (five business days for client-facing derivative contracts) using the formula provided in paragraph (b)(2)(ii)(F) of this section where the conditions in this paragraph (b)(2)(ii)(E)(*1*) apply. For collateral associated with a derivative contract that is within a netting set that is composed of more than 5,000 derivative contracts that are not cleared transactions, an Enterprise must use a minimum holding period of twenty business days. If a netting set contains one or more trades involving illiquid collateral or a derivative contract that cannot be easily replaced, an Enterprise must use a minimum holding period of twenty business days.

(*2*) Notwithstanding paragraph (b)(2)(ii)(A) or (C) or (b)(2)(ii)(E)(*1*) of this section, for collateral associated with a derivative contract in a netting set under which more than two margin disputes that lasted longer than the holding period occurred during the two previous quarters, the minimum holding period is twice the amount provided under paragraph (b)(2)(ii)(A) or (C) or (b)(2)(ii)(E)(*1*) of this section.

(F) An Enterprise must adjust the standard supervisory haircuts upward, pursuant to the adjustments provided in paragraphs (b)(2)(ii)(C) through (E) of this section, using the following formula:

$$H_A = H_S \sqrt{\frac{T_M}{T_S}}$$

Where:

(1) T_M equals a holding period of longer than 10 business days for eligible margin loans and derivative contracts other than client-facing derivative transactions or longer than 5 business days for repo-style transactions and client-facing derivative transactions;

(2) H_s equals the standard supervisory haircut; and

(3) T_s equals 10 business days for eligible margin loans and derivative contracts other than client-facing derivative transactions or 5 business days for repo-style transactions and client-facing derivative transactions.

(G) If the instrument an Enterprise has lent, sold subject to repurchase, or posted as collateral does not meet the definition of financial collateral, the Enterprise must use a 25.0 percent haircut for market price volatility (H_s).

(iii) *Own internal estimates for haircuts.* With the prior written notice to FHFA, an Enterprise may calculate haircuts (H_s and H_{fx}) using its own internal estimates of the volatilities of market prices and foreign exchange rates.

(A) To use its own internal estimates, an Enterprise must satisfy the following minimum quantitative standards:

(*1*) An Enterprise must use a 99th percentile one-tailed confidence interval.

(*2*) The minimum holding period for a repo-style transaction is five business days and for an eligible margin loan is ten business days except for transactions or netting sets for which paragraph (b)(2)(iii)(A)(*3*) of this section applies. When an Enterprise calculates

an own-estimates haircut on a T_N-day holding period, which is different from the minimum holding period for the transaction type, the applicable haircut (H_M) is calculated using the following square root of time formula:

$$H_M = H_N \sqrt{\frac{T_M}{T_N}}$$

Where:

(*i*) T_M equals 5 for repo-style transactions and 10 for eligible margin loans;

(*ii*) T_N equals the holding period used by the Enterprise to derive H_N; and

(*iii*) H_N equals the haircut based on the holding period T_N

(*3*) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, an Enterprise must calculate the haircut using a minimum holding period of twenty business days for the following quarter (except when an Enterprise is calculating EAD for a cleared transaction under § 1240.37). If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, an Enterprise must calculate the haircut using a minimum holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the Enterprise must calculate the haircut for transactions in that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set.

(*4*) An Enterprise is required to calculate its own internal estimates with inputs calibrated to historical data from a continuous 12-month period that reflects a period of significant financial stress appropriate to the security or category of securities.

(*5*) An Enterprise must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the Enterprise's own internal estimates for haircuts under this section and must be able to provide empirical support for the period used. The Enterprise must obtain the prior approval of FHFA for, and notify FHFA if the Enterprise makes any material changes to, these policies and procedures.

(*6*) Nothing in this section prevents FHFA from requiring an Enterprise to use a different period of significant financial stress in the calculation of own internal estimates for haircuts.

(*7*) An Enterprise must update its data sets and calculate haircuts no less frequently than quarterly and must also reassess data sets and haircuts whenever market prices change materially.

(B) With respect to debt securities that are investment grade, an Enterprise may calculate haircuts for categories of securities. For a category of securities, the Enterprise must calculate the haircut on the basis of internal volatility estimates for securities in that category that are representative of the securities in that category that the Enterprise has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. In determining relevant categories, the Enterprise must at a minimum take into account:

(*1*) The type of issuer of the security;

(*2*) The credit quality of the security;

(*3*) The maturity of the security; and

(*4*) The interest rate sensitivity of the security.

(C) With respect to debt securities that are not investment grade and equity securities, an Enterprise must calculate a separate haircut for each individual security.

(D) Where an exposure or collateral (whether in the form of cash or securities) is denominated in a currency that differs from the settlement currency, the Enterprise must calculate a separate currency mismatch haircut for its net position in each mismatched currency based on estimated volatilities of foreign exchange rates between the mismatched currency and the settlement currency.

(E) An Enterprise's own estimates of market price and foreign exchange rate volatilities may not take into account the correlations among securities and foreign exchange rates on either the exposure or collateral side of a transaction (or netting set) or the correlations among securities and foreign exchange rates between the exposure and collateral sides of the transaction (or netting set).

(3) *Simple VaR methodology.* With the prior written notice to FHFA, an Enterprise may estimate EAD for a netting set using a VaR model that meets the requirements in paragraph (b)(3)(iii) of this section. In such event, the Enterprise must set EAD equal to max $\{0, [(\Sigma E - \Sigma C) + PFE]\}$, where:

(i) ΣE equals the value of the exposure (the sum of the current fair values of all instruments, gold, and cash the Enterprise has lent, sold subject to repurchase, or posted as collateral to the counterparty under the netting set);

(ii) ΣC equals the value of the collateral (the sum of the current fair values of all instruments, gold, and cash the Enterprise has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the netting set); and

(iii) PFE (potential future exposure) equals the Enterprise's empirically based best estimate of the 99th percentile, one-tailed confidence interval for an increase in the value of $(\Sigma E - \Sigma C)$ over a five-business-day holding period for repo-style transactions, or over a ten-business-day holding period for eligible margin loans except for netting sets for which paragraph (b)(3)(iv) of this section applies using a minimum one-year historical observation period of price data representing the instruments that the Enterprise has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. The Enterprise must validate its VaR model by establishing and maintaining a rigorous and regular backtesting regime.

(iv) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, an Enterprise must use a twenty-business-day holding period for the following quarter (except when an Enterprise is calculating EAD for a cleared transaction under § 1240.37). If a netting set contains one or more trades involving illiquid collateral, an Enterprise must use a twenty-business-day holding period. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the Enterprise must set its PFE for that netting set equal to an estimate over a holding period that is at least two times the minimum holding period for that netting set.

■ 12. Amend § 1240.41 by revising paragraph (c)(5), redesignating paragraph (c)(6) as paragraph (c)(7), and adding new paragraph (c)(6) to read as follows:

§ 1240.41 Operational requirements for CRT and other securitization exposures.

* * * * *

(c) * * *

(5) Any clean-up calls relating to the credit risk transfer are eligible clean-up calls;

(6) Any time-based calls relating to the credit risk transfer are eligible time-based calls; and

* * * * *

■ 13. Amend § 1240.42 by revising paragraph (f) to read as follows:

§ 1240.42 Risk-weighted assets for CRT and other securitization exposures.

* * * * *

(f) *Interest-only mortgage-backed securities.* For non-credit-enhancing interest-only mortgage-backed securities that are not subject to § 1240.32(c), the

risk weight may not be less than 100 percent.

* * * * *

■ 14. Amend § 1240.400 by revising paragraph (c)(1), and removing paragraph (d) to read as follows:

§ 1240.400 Stability capital buffer.

* * * * *

(c) * * *

(1) *Increase in stability capital buffer.* An increase in the stability capital buffer of an Enterprise under this section will take effect (*i.e.,* be incorporated into the maximum payout ratio under table 1 to paragraph (b)(5) in § 1240.11) on January 1 of the year that is one full calendar year after the increased stability capital buffer was calculated, provided that where a stability capital buffer under paragraph (c)(2) of this section is calculated to be a decrease in the stability capital buffer from the previously calculated scheduled increase applicable on the same January 1, the decreased stability capital buffer under paragraph (c)(2) of this section shall take effect.

* * * * *

Clinton Jones,

General Counsel, Federal Housing Finance Agency.

[FR Doc. 2023–04041 Filed 3–10–23; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0431; Project Identifier MCAI–2022–01277–T]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022–25–16, which applies to all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. AD 2022–25–16 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2022–25–16, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require certain actions in AD 2022–25–16 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 27, 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–2023–0431; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at regulations.gov under Docket No. FAA–2023–0431.
- 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: Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3220; email *Shahram.Daneshmandi@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–2023–0431; Project Identifier MCAI–2022–01277–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3220; email *Shahram.Daneshmandi@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2022–25–16, Amendment 39–22272 (87 FR 77491, December 19, 2022) (AD 2022–25–16), for all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. AD 2022–25–16 was

prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2022–0062, dated April 8, 2022 (EASA AD 2022–0062) (which corresponds to FAA AD 2022–25–16), to correct an unsafe condition.

AD 2022–25–16 retains certain requirements of AD 2020–09–16. AD 2022–25–16 also requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive maintenance requirements and airworthiness limitations, as specified in EASA AD 2022–0062. The FAA issued AD 2022–25–16 to prevent reduced structural integrity of the airplane.

Actions Since AD 2022–25–16 Was Issued

Since the FAA issued AD 2022–25–16, EASA superseded AD 2022–0062 and issued EASA AD 2022–0199, dated September 26, 2022 (EASA AD 2022–0199) (referred to after this as the MCAI), for all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

The FAA is proposing this AD to prevent reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2023–0431.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0199. This service information specifies new or more restrictive maintenance tasks and airworthiness limitations for airplane structures and components.

This proposed AD would also require EASA AD 2022–0062, which the Director of the Federal Register approved for incorporation by reference as of January 23, 2023 (87 FR 77491, December 19, 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**.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2022–25–16. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2022–0199 already described, as proposed for incorporation by reference. Any differences with EASA AD 2022–0199 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the IBR of EASA AD 2022–0062 and incorporate EASA AD 2022–0199 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0199 and EASA AD 2022–0062 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0199 or EASA AD 2022–0062 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0199 or EASA AD 2022–0062. Service information required by EASA AD 2022–0199 and EASA AD 2022–0062 for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2023–0431 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions, Intervals, and CDCCLs'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action, interval, or CDCCL.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 26 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2022–25–16 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2022–25–16, Amendment 39–22272 (87 FR 77491, December 19, 2022); and

■ b. Adding the following new AD:

ATR—GIE Avions de Transport Régional: Docket No. FAA–2023–0431; Project Identifier MCAI–2022–01277–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 27, 2023.

(b) Affected ADs

This AD replaces AD 2022–25–16, Amendment 39–22272 (87 FR 77491, December 19, 2022) (AD 2022–25–16).

(c) Applicability

This AD applies to all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to prevent reduced structural integrity of the airplane.

(f) Compliance

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

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

This paragraph restates the requirements of paragraph (j) of AD 2022–25–16, with no changes. Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety agency (EASA) AD 2022–0062, dated April 8, 2022 (EASA AD 2022–0062). 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 2022–0062, With No Changes

This paragraph restates the exceptions specified in paragraph (k) of AD 2022–25–16, with no changes.

(1) The requirements specified in paragraph (1) and (2) of EASA AD 2022–0062 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0062 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 January 23, 2023 (the effective date of AD 2022–25–16).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0062 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0062, or within 90 days after January 23, 2023 (the effective date of AD 2022–25–16), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0062 do not apply to this AD.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0062.

(i) Retained Provisions for Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs), With No Changes

This paragraph restates the requirements of paragraph (l) of AD 2022–25–16, with no changes. 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), intervals, and CDCCLs are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0062.

(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 2022–0199, dated September 26, 2022 (EASA AD 2022–0199). 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 2022–0199

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0199 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0199 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0199 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0199, 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 2022–0199 do not apply to this AD.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0199.

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

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0199.

(m) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(n) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3220; email *Shahram.Daneshmandi@faa.gov.*

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2022–0199, dated September 26, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on January 23, 2023 (87 FR 77491, December 19, 2022).

(i) European Union Aviation Safety Agency (EASA) AD 2022–0062, dated April 8, 2022 (EASA AD 2022–0062).

(ii) [Reserved]

(5) For EASA ADs 2022–0199 and 2022–0062, 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 March 7, 2023.

Christina Underwood,

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

[FR Doc. 2023–04986 Filed 3–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2023–OESE–0038]

Proposed Priority and Requirements—National Technical Assistance Center on Positive Behavioral Interventions and Supports

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priority and requirements.

SUMMARY: The Department of Education (Department) proposes a priority and requirements under the National Technical Assistance Center on Positive Behavioral Interventions and Supports (Center), Assistance Listing Number (ALN) 84.326S. The Center is funded jointly through the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities and the School Safety National Activities programs. The priority and the requirements proposed in this document are specific to the work funded out of the School Safety National Activities program and are designed to improve student safety and well-being. We may use this priority or one or more of these requirements in fiscal year (FY) 2023 and later years.

DATES: We must receive your comments on or before April 12, 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 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 finding a notice on the site and submitting comments, 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: Renee Bradley, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 987–1128. Email: *renee.bradley@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:

Invitation to Comment: We invite you to submit comments regarding the proposed priority and requirements. To ensure that your comments have maximum effect in developing the final priority and requirements, we urge you to clearly identify the specific section of the proposed priority and requirements that each comment addresses.

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 the proposed priority and requirements. 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 priority and requirements.

During and after the comment period, you may inspect all public comments about the proposed priority and requirements by accessing *Regulations.gov*. You may also inspect the comments in person. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT** to make arrangements to inspect the comments in person.

Note: The Center is jointly funded under the Individuals with Disabilities Education Act (IDEA) and the Elementary and Secondary Education Act (ESEA). By combining funds from two separate programs, the Department is able to make a more comprehensive investment to address the purpose of the Center. The Department intends to publish a notice inviting applications later this fiscal year and applicants may be expected to address the priorities and requirements under both authorizing statutes. Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to priorities from allowable activities specified in the statute (see sections 663 and 681(d) of IDEA) that may be included in a notice inviting applications for the Center. Therefore, we are only taking public comment on the proposed priority and requirements described in this document, which are to be funded under the ESEA.

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 priority and requirements. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Center is to enhance the capacity of States and local educational agencies (LEAs) to implement positive and safe school climates, and effectively support and respond to students' social, emotional, behavioral, and mental health needs to ensure participation and enhance learning, by implementing evidence-based practices within a multi-tiered system of support (MTSS) framework.

Program Authority: Section 4631(a)(1)(B) of the ESEA (20 U.S.C. 7281).

Proposed Priority:

This document contains one proposed priority.

Background:

Many students need additional supports to address social, emotional, and behavioral challenges that impact their full access to and participation in learning (Chafouleas, 2020). These challenges, if not properly addressed, can lead to student responses that are inconsistent with school or program expectations. The COVID–19 global pandemic exacerbated these challenges, accelerating the need to provide school-based social, emotional, behavioral, and mental health supports and leverage the existing evidence base about how to provide nurturing educational environments to meet the needs of our nation's youth.

MTSS frameworks such as positive behavioral interventions and supports (PBIS) [1] have been validated by numerous randomized control trials (Bradshaw et al., 2012; Freeman et al., 2017). When implemented with fidelity, PBIS outcomes include reductions in removals of students from instruction; improved student exposure to and success in academics (grades and completion); improved educator satisfaction and retention; and improved overall ratings of school safety, belonging, and climate.

Despite improved outcomes and knowledge from PBIS implementation efforts over the last two decades, data from the Office for Civil Rights Data Collection suggests students from underserved groups are more likely to experience exclusionary discipline (*e.g.,* suspensions, expulsions) (U.S. Department of Education, Civil Rights Data Collection SY17–18, Office for Civil Rights, 2021). Disaggregated data shows that disproportionality in discipline grows when considering race, gender, and disability (Civil Rights Data Collection SY17–18, Office for Civil Rights, 2021). Research consistently shows that students of color, particularly Black students, Native students, and Black students with disabilities are significantly more likely than their non-disabled, or white peers to be subjected to exclusionary discipline practices, including office discipline referrals and suspensions (*e.g.,* Gage et al., 2019; McIntosh et al., 2018; McIntosh et al., 2021; Civil Rights Data Collection SY17–18, Office for Civil Rights, 2021). While disproportionality with respect to Black boys has long been acknowledged, more recent data analysis indicates the disproportionality also exists for Black girls as compared to White girls (Hassan & Carter, 2021). Other studies show disproportionality based on gender, historically demonstrating boys receive suspensions and expulsions at higher rates than girls (Bradshaw et al., 2010). Higher rates of punitive discipline practices also exist for students who identify as LGBTQ and those with disabilities (Himmelstein and Brückner, 2011; Brobbey, 2018). When students are denied access to instruction and participation in school opportunities, they are more likely to experience negative outcomes in school and later in life, including poor academic outcomes, lower graduation rates, incarceration, and employment and relationship challenges (Hemez et al., 2020; Lansford et al., 2016).

One of the most significant barriers to reducing exclusionary and aversive discipline practices for students, including students of color and students with disabilities, is the lack of culturally and linguistically inclusive pre-service and in-service training for teachers and leaders on effective practices for creating positive, safe learning environments to teach and support desired school behaviors and for responding to and mitigating behaviors that are inconsistent with school expectations and interfere with learning. The PBIS framework has provided an effective multi-tiered structure through the implementation and examination of systems, practices, and data to assist LEAs and schools in addressing inequities. When there is fidelity in implementing evidence-based practices (EBPs) to prevent, reduce, and mitigate interfering behaviors within a PBIS framework, studies have found the following statistically significant results: improved perception of school safety; reductions in overall behaviors that are inconsistent with classroom or school expectations and that interfere with

[1] The term ''positive behavioral interventions and supports'' was first used in a priority published by the Department in 1997, and it is currently used in the IDEA (*e.g.,* sections 601(c)(5)(F), 611(e)(2)(C)(iii), 614(d)(3)(B)(i), 662(b)(2)(A)(v), and 665) and the ESEA (*e.g.,* section 4631(a)(1)(B)). We do not use PBIS to mean any specific program or curriculum. Rather, we use the term generically to reference a multi-tiered framework used to improve the integration and implementation of social, emotional, behavioral and mental health practices, data-driven decision-making systems, professional development opportunities, school leadership, supportive SEA and LEA policies, and evidence-based instructional strategies. A PBIS framework helps to organize practices to improve social, emotional, behavioral, mental health and academic outcomes by improving school climate, promoting positive social skills, promoting effective strategies to support and respond to student needs, and increasing learning time.

learning; and reduction of bullying behaviors, office discipline referrals, chronic absenteeism, and suspensions (Waasdorp et al., 2012). The PBIS framework has solidified the importance of core strategies, including: implementing EBPs; providing the systems needed to support those practices; and data-based decision-making; to create and sustain positive, safe, and predictable learning environments. Fidelity in the implementation of the core strategies has also demonstrated the importance of adult responses, including effectively supporting and responding to student behavior (Horner, et al., 2020).

Although prior Department investments have led to successful implementation of the PBIS framework and positive outcome data in over 27,000 schools, based on persistent needs in the field, the Department has determined that additional and continued technical assistance (TA) is needed to focus on: (1) students with more intensive social, emotional, behavioral, and mental health needs and those most likely to be excluded from the learning environment due to behavior that interferes with learning; (2) pre-service and in-service training on culturally and linguistically inclusive practices that support students from underserved groups; (3) improving implementation fidelity; and (4) addressing other systemic inequities such as access to school funding, experienced educators, and advanced coursework opportunities. In addition, the Department has determined that State educational agencies (SEAs) and LEAs could benefit from further TA to develop, expand, and sustain school-wide frameworks and to build personnel capacity and expertise to promote safe, positive, predictable, and culturally and linguistically inclusive learning environments where students feel a sense of belonging. Such additional TA would be focused on increasing the use of EBPs to more effectively support and respond to student needs, such as teaching school and classroom expectations, building classroom cultures of respect and belonging, and implementing trauma-informed practices. Such additional TA also would be focused on using EBPs to reduce the use of restraints seclusion and corporal punishment; chronic absenteeism; incidents of bullying; the disproportionate application of disciplinary procedures, such as suspension and expulsion, for students, including students of color and those with disabilities; unnecessary referrals of students to law enforcement; and violent and traumatic school incidents.

The Center will support States and LEAs in implementing EBPs within a MTSS/PBIS framework that improves results for children, including children with disabilities. While PBIS is one evidence-based MTSS framework for addressing social, emotional, behavioral and mental health needs, the Department expects that the Center will stay abreast of developing frameworks and identify and incorporate a broad array of EBPs to support and respond to student needs, and tailor technical assistance in the settings established in the priority. This investment is aligned to the Secretary's Supplemental Priorities and Definitions for Discretionary Grant Programs published in the **Federal Register** on December 10, 2021 (86 FR 70612), in the areas of meeting student social, emotional, and academic needs, and promoting equity in student access to educational resources and opportunities.

Proposed Priority:

The Department proposes the following priority for this program. We may apply this priority in any year in which this program is in effect.

Proposed Priority—Technical Assistance—School Safety National Activities Program—National Technical Assistance Center on Positive Behavioral Interventions and Supports.

The purpose of this priority is to enhance the capacity of SEAs and LEAs to implement positive and safe school environments, and effectively support and respond to students' social, emotional, behavioral, and mental health needs to improve their learning, by implementing evidence- based practices (EBPs) [2] within a Multi-Tiered System of Support (MTSS)/Positive Behavioral Interventions and Supports (PBIS) framework [3] in one or more of the following settings:

(i) Programs or schools serving high percentages of students from low-income families in the following settings:

(1) Early learning programs.

(2) Elementary schools.

(3) Middle schools.

(4) High schools.

(5) Career and technical education programs.

(6) Rural schools.

(ii) Alternative schools and programs.

(iii) Juvenile justice system or correctional facilities.

(iv) Low-performing schools.

(v) Schools with a high student-to-mental health provider ratio.

(vi) Schools with high rates of chronic absenteeism, exclusionary discipline, referrals to the juvenile justice system, bullying/harassment, community and school violence, or substance abuse.

(vii) Schools in which students recently experienced a natural disaster, incident of violence, or traumatic event.

(viii) Schools with high percentages of students with disabilities.

To meet this priority, the applicant must propose to achieve, at a minimum, one or more of the following expected outcomes:

(a) Improved systems and resources at the national, regional, State, and district levels to support, develop, align, and sustain local implementation of MTSS/PBIS efforts to organize EBPs to support positive school climates and respond to student social, emotional, behavioral, and mental health needs to improve access to and engagement in learning.

(b) Improved capacity of SEA and LEA personnel to support the knowledge and skills development of school personnel to implement MTSS/PBIS as a framework to organize EBPs to support and respond to student needs, particularly those from underserved, culturally and linguistically diverse backgrounds, and those whose behaviors may interfere with a student's ability to fully participate in, and benefit from, a high-quality learning environment.

(c) Increased use by SEAs, LEAs, and school-based personnel of reliable and valid tools and processes for enhancing and assessing the fidelity of implementation of a MTSS/PBIS Framework and for measuring intended outcomes, including improvements in school climate; time spent on instruction; well-being and belonging; overall academic achievement; and reductions in absenteeism, discipline referrals, suspensions, expulsions, the use of restraints or seclusion, illegal use of drugs, and referrals to law enforcement.

(d) Improved implementation of a MTSS/PBIS framework, EBPs, and assessment of SEA or LEA recipients of grant programs that focus on improving positive school climates and implementing EBPs to support and respond to students' social, emotional, behavioral, and mental health needs.

[2] For the purposes of this priority, ''evidence-based practices'' (EBPs) means, at a minimum, demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

[3] PBIS is an evidence-based, tiered framework (Tier 1: Universal, Primary Prevention; Tier 2: Targeted, Secondary Prevention; and Tier 3: Intensive and Individualized, Tertiary Prevention) for supporting students' behavioral, academic, social, emotional, and mental health.

(e) Enhanced response and recovery assistance, as requested by and in collaboration with the Department, for violent or traumatic incidents that impact school communities, including intensive individualized support to facilitate recovery of the learning environment.

(f) Increased body of knowledge and evidence to enhance implementation of PBIS and other emerging MTSS frameworks and EBPs to address the social, emotional, behavioral, and mental health needs of students in the settings established in the priority.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements:

The Department proposes the following eligible applicants and application requirements for this program. We may apply one or more of these requirements in any year in which the program is in effect.

Eligible Applicants: SEAs; State lead agencies under Part C of the IDEA; LEAs, including public charter schools that are considered LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

Proposed Application Requirements:

(a) Demonstrate how the proposed project will—

(1) Improve SEAs' and LEAs' implementation, scaling, and sustaining of EBPs within a MTSS/PBIS framework and policies that are designed to improve school climate and, as needed, provide additional behavioral supports for students whose behavior impacts their ability to fully participate in, and benefit from, a high-quality learning environment, including students with disabilities. To meet this requirement, the applicant must—

(i) Present applicable State, regional, or local data demonstrating SEAs' and LEAs' needs related to (A) implementation of EBPs and policies to improve school climate, student well-being and belonging; and (B) increasing students' ability to fully participate in, and benefit from, a high-quality learning environment;

(ii) Demonstrate knowledge of current education issues and policy initiatives relating to MTSS/PBIS and school climate practices and policies and EBPs to effectively support and respond to student behavior that impacts learning; and

(iii) Present information about the current level of implementation of MTSS/PBIS, EBPs, policies, best practices, and benefits for all students, especially underserved students and those from culturally and linguistically diverse backgrounds; and

(2) Improve the implementation of EBPs within a MTSS/PBIS framework to effectively support and respond to student behaviors that impact access to and participation in learning.

(b) Demonstrate how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the TA and information needs of the intended recipients; and

(ii) Ensure that services and products meet the needs of the intended recipients of the TA;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) The logic model [4] by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

(4) Be based on current research and make use of EBPs. To meet this requirement, the applicant must describe—

(i) The current research on the assessment of the implementation of MTSS/PBIS frameworks and related EBPs;

(ii) The current research about adult learning principles and implementation science that will inform the proposed TA; and

(iii) How the proposed project will incorporate current and emerging research and practices in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base of PBIS;

(ii) Its proposed approach to universal, general TA,[5] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services, a description of the products and services that the Center proposes to make available, and the expected impact of those products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[6] which must identify—

[4] As defined in 34 CFR 77.1, ''logic model'' (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

[5] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with Center staff and including one-time, invited or offered conference presentations by Center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the Center's website by independent users. Brief communications by Center staff with recipients, either by telephone or email, are also considered universal, general TA.

[6] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more Center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around

Continued

(A) The intended recipients, including the type and number of recipients, that will receive the products and services, a description of the products and services that the Center proposes to make available, and the expected impact of those products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current systems, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,[7] which must identify—

(A) The intended recipients, including the type and number of recipients from a variety of settings and geographic distribution, that will receive the products and services designed to improve school climate;

(B) Its proposed approach to measure the readiness of the State- and local-level personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current systems, available resources, and ability to build capacity at the local level;

(C) Its proposed plan for assisting SEAs, LEAs, local Part C agencies, charter management organizations, and private school organizations to build or enhance training systems that include professional development based on adult learning principles and coaching; and

(D) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, LEAs, schools, families) to ensure that there is communication between each level and that there are systems in place to support the use of PBIS;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes; and

(7) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of dissemination strategies, to promote awareness and use of the Center's products and services.

(c) Include an evaluation plan for the project as described in the following paragraphs. The evaluation plan must describe measures of progress in implementation, including criteria for determining the extent to which the project's products and services have met the goals for reaching its target population; measures of intended outcomes or results of the project's activities in order to evaluate those activities; and how well the goals or objectives of the proposed project, as described in its logic model, have been met.

The applicant must provide an assurance that, in designing the evaluation plan, it will—

(1) Designate, with the approval of the Office of Special Education Programs (OSEP) project officer in consultation with Office of Elementary and Secondary Education (OESE) staff, a project liaison with sufficient dedicated time, experience in evaluation, and knowledge of the project to work in collaboration with the Center to Improve Program and Project Performance (CIPP),[8] the project director, and the OSEP project officer on the following tasks:

(i) Revise the logic model submitted in the application, as appropriate, to provide for a more comprehensive measurement of implementation and outcomes and to reflect any changes or clarifications to the model discussed at the kickoff meeting;

(ii) Refine the evaluation design and instrumentation proposed in the application, as appropriate, to be consistent with the revised logic model and using the most rigorous design suitable (*e.g.,* prepare evaluation questions about significant program processes and outcomes; develop quantitative or qualitative data collections that permit both the collection of progress data, including fidelity of implementation, as appropriate, and the assessment of project outcomes; and identify analytic strategies); and

(iii) Revise the evaluation plan submitted in the application such that it clearly—

(A) Specifies the evaluation questions, measures, and associated instruments or sources for data appropriate to answer these questions, suggests analytic strategies for those data, provides a timeline for conducting the evaluation, and includes staff assignments for completing the evaluation activities;

(B) Delineates the data expected to be available by the end of the second project year for use during the project's evaluation (3+2 review) by OSEP for continued funding described under the heading *Fourth and Fifth Years of the Project;* and

(C) Can be used to assist the project director and the OSEP project officer in consultation with OESE staff, with the assistance of CIPP, as needed, to specify the project performance measures to be addressed in the project's annual performance report;

(2) Dedicate sufficient staff time and other resources during the first 6 months of the project to collaborate with CIPP staff, including regular meetings (*e.g.,* weekly, biweekly, or monthly) with CIPP and the OSEP project officer, in order to accomplish the tasks described in paragraph (c)(1) of this section; and

(3) Dedicate sufficient funds in each budget year to cover the costs of carrying out the tasks described in paragraphs (c)(1) and (2) of this section and revising and implementing the evaluation plan. Please note in your budget narrative the funds dedicated for this activity.

(d) Demonstrate how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, language, sexual orientation, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[7] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the Center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[8] The major tasks of CIPP are to guide, coordinate, and oversee the design of formative evaluations for every large discretionary investment (*i.e.,* those awarded $500,000 or more per year and required to participate in the 3+2 process) in OSEP's Technical Assistance and Dissemination; Personnel Development; Parent Training and Information Centers; and Educational Technology, Media, and Materials programs. The efforts of CIPP are expected to enhance individual project evaluation plans by providing expert and unbiased TA in designing the evaluations with due consideration of the project's budget. CIPP does not function as a third-party evaluator.

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policymakers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kickoff meeting in Washington, DC after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer, OESE representative, and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two- and one-half day project directors' conference in Washington, DC during each year of the project period;

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP or OESE; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC during the second year of the project period;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer in consultation with OESE staff as appropriate. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Ensure that annual project progress toward meeting project goals is posted on the project website; and

(6) Include an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to a new award at the end of this award period, as appropriate.

Fourth and Fifth Years of the Project: In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), including—

(a) The recommendations of a 3+2 review team consisting of experts who have experience and knowledge in PBIS. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

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Final Priority and Requirements: We will announce the final priority and requirements in a document published in the **Federal Register**. We will determine the final priority and requirements after considering responses to the proposed priority and requirements and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use the priority and requirements, we invite applications through a notice inviting applications in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (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.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action 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 are issuing the proposed priority and requirements only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that the proposed priority and requirements 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.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Potential Costs and Benefits

The Department believes that this proposed regulatory action would not impose significant costs on eligible entities, whose participation in our programs is voluntary, and costs can generally be covered with grant funds. As a result, the proposed priority and requirements would not impose any particular burden, except when an entity voluntarily elects to apply for a grant. The proposed priority and requirements would help ensure that the Center grant program selects a high-quality applicant to implement activities that meet the goals of the program. We believe these benefits would outweigh any associated costs.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priority and requirements easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed priority and requirements clearly stated?
- Do the proposed priority and requirements contain technical terms or other wording that interferes with their clarity?
- Could the description of the proposed priority and requirements in the **SUPPLEMENTARY INFORMATION** section of the preamble be more helpful in making the proposed priority and requirements easier to understand? If so, how?
- What else could we do to make the proposed priority and requirements easier to understand?

To send any comments on how the Department could make the proposed priorities and requirements easier to understand, see the instructions in the **ADDRESSES** section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a

strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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 U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this proposed regulatory action would affect are LEAs. Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary. Therefore, we do not believe that the proposed priority and requirements would significantly impact small entities beyond the potential for increasing the likelihood of their applying for, and receiving, a competitive grant from the Department.

Paperwork Reduction Act

The proposed priority and requirements contain information collection requirements that do not require the Office of Management and Budget's approval for the information collection, since the Department anticipates less than 9 applicants for this targeted and specialized program. According to section 1320.3(c) of the Paperwork Reduction Act (PRA), ''the ''collection of information'' includes the obtaining of information by or for an agency by means of identical questions imposed on ten or more persons.''

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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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.

James F. Lane,

Senior Advisor, Office of the Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023–04974 Filed 3–10–23; 8:45 am]

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POSTAL REGULATORY COMMISSION

39 CFR Parts 3006 and 3011

[Docket No. RM2023–6; Order No. 6451]

RIN 3211–AA35

Non-Public Materials

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing revisions to existing rules on non-public materials and revisions to existing rules on the Freedom of Information Act (FOIA). This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: Comments are due: April 6, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

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I. Background

In conducting the foreign policy of the United States with respect to international postal services and international delivery services, the Secretary of State must coordinate with applicable government agencies, including the Commission, under 39 U.S.C. 407(b)(2)(A). Such coordination about foreign affairs requires timely, free, and frank flow of information between government agencies. The Secretary of State exercises ''primary authority for the conduct of foreign policy with respect to international postal services and international delivery services.'' 39 U.S.C. 407(b)(2)(A). In exercising this authority, the Secretary of State ''shall coordinate with other agencies as appropriate'' and ''shall give full consideration to the authority vested by law or Executive order in the Postal Regulatory Commission.'' *Id.* Flowing from this authority, the U.S. Department of State (DOS) coordinates continuous and frequent information sharing among the relevant government agencies. As a routine part of this intragovernmental coordination, the agencies share materials with each other that may contain information that should be accorded non-public treatment.

In other contexts, such exchange of non-public materials might implicate the Commission's existing regulations in 39 CFR part 3011 of this chapter that govern procedures when any submitter provides non-public materials to the Commission and seeks non-public treatment, and when a third party seeks access to or disclosure of such non-public materials. It might also implicate the Commission's existing regulations in 39 CFR part 3006 of this chapter that govern procedures regarding FOIA requests for Commission records.

II. Basis of the Proposed Rules

After experience with its rules, the Commission is concerned that the existing regulations on non-public materials might not set sufficiently clear expectations about those regulations' interaction with Executive Branch policy-making processes. Absent such clarity, Executive Branch stakeholders might be wary of engaging in the free flow of information between relevant parties during the DOS coordination activities under 39 U.S.C. 407(b)(2)(A) aimed at advising on U.S. foreign postal policy in a timely manner. To assure the free flow of information and streamline the Commission regulations that may impact activities under the coordination of the DOS, the Commission proposes to

explicitly exempt non-public materials submitted to the Commission in connection with the coordination activities under 39 U.S.C. 407(b)(2)(A) from its rules in 39 CFR part 3011 of this chapter. Relatedly, the Commission also proposes clarifying revisions to its rules in 39 CFR part 3006 of this chapter regarding FOIA requests.

The Commission's authority to regulate certain non-public materials provided by the Postal Service stems from 39 U.S.C. 504(g). Section 504(g) is triggered if the Postal Service determines that any material it provides to the Commission under a subpoena issued under 39 U.S.C. 504(f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under Title 39, contains non-public information. 39 U.S.C. 504(g)(1). After the Postal Service provides such a determination to the Commission, the Commission then has specific authority under 39 U.S.C. 504(g)(3) to regulate the public disclosure of or access to such non-public materials. *See* 39 U.S.C. 504(g)(3). The scope of 39 U.S.C. 504(g)(1) plainly does not apply to the Commission's receipt of non-public materials provided by government agencies other than the Postal Service in connection with the coordination activities under 39 U.S.C. 407(b)(2)(A). It also does not apply to the Commission's receipt of non-public materials provided by the Postal Service in connection with the coordination activities under 39 U.S.C. 407(b)(2)(A), because the Postal Service would provide such materials voluntarily or at the request of the coordinating authority (*i.e.,* the DOS) rather than pursuant to a Commission subpoena or otherwise at the request of the Commission in connection with a proceeding. Therefore, it is consistent with 39 U.S.C. 504(g) to exempt non-public materials received by the Commission from any person in connection with the coordination activities under 39 U.S.C. 407(b)(2)(A) from the rules in 39 CFR part 3011 of this chapter.

The Commission's authority to regulate non-public materials provided by the Postal Service outside the context of 39 U.S.C. 504(g) and any materials provided by any other person stems from 39 U.S.C. 503. This provision grants the Commission general authority to take actions, such as issuing rules and regulations, that are ''necessary and proper'' to carry out its ''functions and obligations'' under Title 39 of the United States Code. 39 U.S.C. 503. Therefore, the Commission has broad discretion to determine the boundary of its regulations' applicability to materials outside the context of 39 U.S.C. 504(g).

In addition, the Commission's role in the coordination activities as part of the foreign postal policy deliberative process under 39 U.S.C. 407(b)(2)(A) is subordinate to the DOS's leadership and decision-making authority. The Commission's receipt of non-public materials in this context is different from a Commission request for information in a regulatory proceeding over which the Commission presides. To facilitate the swift exchange of information among all agencies involved in the deliberative process and harmonize Commission application of the statute, the Commission deems it reasonable to explicitly provide that non-public materials submitted in this specific context are exempt from the requirements of 39 CFR part 3011 of this chapter.

IV. Proposed Rules

Proposed § 3006.30(d). Proposed § 3006.30(d) is revised to exempt non-public materials submitted by the Postal Service to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A) from the applicability of the rules in 39 CFR part 3011 of this chapter.

Proposed § 3006.30(e)(1). Proposed § 3006.30(e)(1) is revised to state that if the Commission receives a FOIA request for records submitted by a person other than the Postal Service, the Commission shall adhere to the applicable procedures of the proposed § 3006.35, and if the Commission does not refer such a FOIA request to another Federal agency pursuant to proposed § 3006.35(b), the Commission shall consider the FOIA request in light of all applicable exemptions, after notifying the submitter of the FOIA request and providing the submitter with an opportunity to respond.

Proposed § 3006.35. Proposed § 3006.35 is added to detail the procedures that the Commission should follow for consultation, referral, and coordination with other Federal agencies with regard to certain FOIA requests, and for FOIA requests that involve classified information. It also provides for the timing of responses to FOIA consultations and referrals received by the Commission, and the Commission's ability to establish agreements with other agencies to eliminate the need for consultations or referrals for particular types of records.

Proposed § 3006.70(a). Proposed § 3006.70(a) is revised to exempt a person other than the Postal Service from following the procedures described in subpart B of 39 CFR part 3011 of this chapter when the person submits non-public materials to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A).

Proposed § 3011.100(c). Proposed § 3011.100(c) is added to exempt non-public materials submitted by any person to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A) from the applicability of the rules in 39 CFR part 3011 of this chapter, with three exceptions. First, certain persons shall adhere to the requirements of § 3011.302 regarding the non-dissemination, use, and care of the non-public materials provided to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A). Second, any person that discovers that non-public materials provided to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A) have been inadvertently included within materials that are accessible to the public shall follow the procedures of § 3011.205. Third, non-public materials provided to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A) are construed to exclude each of the following: (i) non-public materials provided by the Postal Service to the Commission pursuant to a subpoena; (ii) non-public materials filed in response to an information request; (iii) non-public materials filed in compliance with any applicable Postal Service reporting required under 39 CFR part 3050 or part 3055 of this chapter; and (iv) non-public materials filed in a Commission docket.

Proposed § 3011.103(a). Proposed § 3011.103(a) is revised to clarify that the inadvertent failure of a submitter to concomitantly provide all documents required by existing § 3011.200(a) does not prevent the Commission from according appropriate confidentiality to non-public information contained with any materials provided to the Commission.

By the Commission.

Mallory Richards,

Attorney-Advisor.

List of Subjects

39 CFR Part 3006

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements.

39 CFR Part 3011

Administrative practice and procedure, Confidential business information.

For the reasons stated in the preamble, the Commission proposes to

amend chapter III of title 39 of the Code of the Federal Regulations as follows:

PART 3006—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 3006 is revised to read as follows:

Authority: 5 U.S.C. 552; 39 U.S.C. 407, 503, 504.

■ 2. Amend § 3006.30 by revising paragraphs (d) and (e) to read as follows:

§ 3006.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.

* * * * *

(d) *Requesting a Postal Service record.* The Commission maintains custody of records that are both Commission and Postal Service records. Except when the Postal Service submits materials to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A), in all other instances that the Postal Service submits materials to the Commission that the Postal Service reasonably believes to be exempt from public disclosure, the Postal Service shall follow the procedures described in part 3011, subpart B of this chapter.

(1) A request made pursuant to FOIA for Postal Service records shall be referred to the Postal Service; and

(2) A request made pursuant to part 3011 of this chapter for records designated as non-public by the Postal Service shall be considered under the applicable standards set forth in that part.

(e) *Requesting a record submitted under seal by a person other than the Postal Service.* The Commission maintains records of a confidential nature submitted by persons other than the Postal Service as non-public materials.

(1) A request made pursuant to FOIA for records submitted by a person other than the Postal Service shall adhere to the applicable procedures of § 3006.35 and if not referred to a different Federal agency pursuant to § 3006.35(b), shall be considered in light of all applicable exemptions, after notifying the person of the FOIA request and providing the person with an opportunity to respond; and

(2) A request made pursuant to part 3011 of this chapter for records designated as non-public by a person other than the Postal Service shall be considered under the applicable standards set forth in that part.

■ 3. Add § 3006.35 to read as follows:

§ 3006.35 Consultation, referral, and coordination.

(a) *Consultation.* If records originated with the Commission but contain within them information of significance to another Federal agency or office, the Commission will typically consult with that other entity prior to making a release determination.

(b) *Referral.* In addition to referring all requests made pursuant to FOIA for Postal Service records to the Postal Service as specified by § 3006.30(d)(1), if the Commission believes that a different Federal agency is best able to determine whether to disclose the record, the Commission will typically refer responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. Whenever the Commission refers any part of the responsibility for responding to a request to another agency, the Commission will notify the requester of the referral, including the name of the agency and that agency's FOIA contact information.

(c) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the Federal agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if the Commission locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the Commission will coordinate with the originating agency to seek its views on disclosure of the record. The Commission then will notify the requester of the release determination for the record that is the subject of the coordination.

(d) *Classified information.* On receipt of any request involving classified information, the Commission will determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, the Commission must refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever an agency's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), the Commission must refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals received by the Commission will be handled according to the date that the first agency received the perfected FOIA request.

(f) *Agreements regarding consultations and referrals.* The Commission may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

■ 4. Amend § 3006.70 by revising paragraph (a) to read as follows:

§ 3006.70 Submission of non-public materials by a person other than the Postal Service.

(a) *Overlap with treatment of non-public materials.* Any person who submits materials to the Commission (submitter) that the submitter reasonably believes to be exempt from public disclosure shall follow the procedures described in part 3011, subpart B of this chapter, except when the submitter submits materials to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A).

* * * * *

PART 3011—NON–PUBLIC MATERIALS PROVIDED TO THE COMMISSION

■ 5. The authority citation for part 3011 is revised to read as follows:

Authority: 39 U.S.C. 407, 503, 504.

■ 6. Amend § 3011.100 by adding paragraph (c) to read as follows:

§ 3011.100 Applicability and scope.

* * * * *

(c) *Exemption.* Except for the circumstances described in paragraphs (c)(1) through (c)(3) of this section, the rules in this part do not apply to any non-public materials (and the non-public information contained therein) provided to the Commission by any person in connection with activities under 39 U.S.C. 407(b)(2)(A).

(1) The following persons shall adhere to the requirements of § 3011.302 regarding the non-dissemination, use, and care of the non-public materials (and the non-public information contained therein) provided to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A).

(i) Members of the Commission;

(ii) Commission employees; and

(iii) Non-employees who have executed appropriate non-disclosure agreements (such as contractors, attorneys, or subject matter experts) assisting the Commission in carrying out its duties.

(2) Any person that discovers that non-public materials provided to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A) have been inadvertently included within materials that are accessible to the public shall follow the procedures of § 3011.205.

(3) Non-public materials provided to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A) are construed to exclude each of the following:

(i) Non-public materials provided by the Postal Service to the Commission pursuant to a subpoena issued in accordance with part 3013 of this chapter;

(ii) Non-public materials filed in response to an information request issued in accordance with § 3010.170 of this chapter;

(iii) Non-public materials filed in compliance with any applicable Postal Service reporting required under part 3050 or part 3055 of this chapter; and

(iv) Non-public materials filed in a Commission docket.

■ 7. Amend § 3011.103 by revising paragraph (a) to read as follows:

§ 3011.103 Commission action to determine non-public treatment.

(a) The inadvertent failure of a submitter to concomitantly provide all documents required by § 3011.200(a) does not prevent the Commission from according appropriate confidentiality to non-public information contained with any materials provided to the Commission. Information requests as described in § 3010.170 of this chapter, preliminary notices, or interim orders may be issued to help the Commission determine the non-public treatment, if any, to be accorded to the materials claimed by any person to be non-public.

* * * * *

[FR Doc. 2023–04978 Filed 3–10–23; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[EPA–HQ–OPP–2022–0133; FRL–8528–03–OCSPP]

RIN 2070–AK92

Pesticides; Agricultural Worker Protection Standard; Reconsideration of the Application Exclusion Zone Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to reinstate certain requirements that were amended in 2020 regarding the application exclusion zone (AEZ) requirements of the Agricultural Worker Protection Standard (WPS). EPA has reconsidered the amended AEZ requirements and has determined that several aspects of the AEZ provisions, such as those regarding the applicability of the AEZ and distance determination criteria, should be revised to reinstate previous requirements that are protective of public health and to limit exposure for those who may be near ongoing pesticide applications.

DATES: Comments must be received on or before May 12, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2022–0133, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Carolyn Schroeder, Pesticide Re-Evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2376; email address: *schroeder.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you work in or employ persons working in crop production agriculture where pesticides are applied. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agricultural Establishments (NAICS code 111000);
- Nursery and Tree Production (NAICS code 111421);
- Timber Tract Operations (NAICS code 113110);
- Forest Nurseries and Gathering of Forest Products (NAICS code 113210);
- Farm Workers (NAICS codes 11511, 115112, and 115114);
- Pesticide Handling on Farms (NAICS code 115112);
- Farm Labor Contractors and Crew Leaders (NAICS code 115115);
- Pesticide Handling in Forestry (NAICS code 115310);
- Pesticide Manufacturers (NAICS code 325320);
- Farm Worker Support Organizations (NAICS codes 813311, 813312, and 813319);
- Farm Worker Labor Organizations (NAICS code 813930); and
- Crop Advisors (NAICS codes 115112, 541690, 541712).

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

This action is issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 through 136y, particularly sections 136a(d), 136i, and 136w.

C. What action is the Agency taking?

EPA is proposing to revise certain AEZ requirements of the WPS that were amended by EPA in a final rule published on October 30, 2020 (85 FR 68760) (''2020 AEZ Rule'') (Ref. 1). As further explained in Unit II.A.4., the effective date of the 2020 AEZ Rule is currently stayed pursuant to a court order; that is, the 2020 AEZ Rule has not yet taken effect. EPA proposes to revise the AEZ requirements by rescinding the

following changes outlined in the 2020 AEZ Rule and reinstating the related AEZ requirements as published in a final rule on November 2, 2015 (80 FR 67496) (''2015 WPS'') (Ref. 2).

1. The Area Where the AEZ Applies

The 2020 AEZ Rule would have limited the applicability of the AEZ to the agricultural employer's property such that the AEZ would no longer cover bystanders on adjacent properties. As a result, the 2020 AEZ Rule would have solely relied upon the ''Do Not Contact'' requirement in the WPS (further described in Unit II.A.) as the method of protecting people on adjacent properties had the rule gone into effect. This rule proposes to reinstate the 2015 WPS regulatory text requiring pesticide handlers to suspend applications if any worker or other person, other than appropriately trained and equipped handlers involved in the application, enters an AEZ regardless of whether they are on or off the establishment. See Unit II.B. for the detailed discussion of this proposed revision.

2. The Exception to Application Suspension Requirements for Property Easements

The 2020 AEZ Rule would have created an exception for agricultural employers and handlers from the requirement to suspend pesticide applications due to the presence of an individual not employed by the establishment who is within an AEZ but in an area subject to an easement that prevents the agricultural employer from temporarily excluding those individuals from that area. This rule proposes to reinstate the 2015 WPS regulatory text that requires pesticide handlers to suspend applications if any worker or other person, other than appropriately trained and equipped handlers involved in the application, enters an AEZ regardless of whether they are in an area subject to an easement. See Unit II.C. for the detailed discussion of this proposed revision.

3. The Distances From the Application Equipment in Which Entry Restrictions Associated With Ongoing Pesticide Applications Apply

The 2020 AEZ Rule would have reduced AEZ distances from 100 feet to 25 feet for certain ground-based sprays using fine droplet sizes and simplified all ground-based sprays to be 25 feet when sprayed at a height of greater than 12 inches. This rule proposes to reinstate the 2015 WPS regulatory text that specifies a distance of 100 feet for ground-based fine spray applications, a 25-foot AEZ for ground-based applications using medium or larger droplet sizes sprayed above 12 inches, and to reinstate all applicable determination criteria from the 2015 WPS with the exception of the Volume Median Diameter (VMD) droplet size criterion when making distance determinations. EPA proposes to replace VMD by citing standards that more accurately define medium droplet sizes. Additionally, to maintain consistency in the requirements between outdoor production applications and applications associated with enclosed space production, EPA is also proposing to remove VMD as a criterion for entry restriction distances during enclosed space production pesticide applications and instead using the same droplet size standards as those used for outdoor production. See Units II.D. and II.E. for the detailed discussion of these proposed revisions.

EPA is also proposing to maintain certain revisions that were presented in the 2020 AEZ Rule, such as the provision that clarifies that pesticide applications that were suspended due to individuals entering an AEZ may be resumed after those individuals have left the AEZ, and the exemption that allows farm owners and members of their immediate family (as defined in 40 CFR 170.305) to shelter within closed structures within an AEZ during pesticide applications, provided that the owner has instructed the handlers that only the owner's immediate family are inside the closed shelter and that the application should proceed despite their presence. See Unit II.F. for a detailed discussion of these proposals.

D. Why is the Agency taking this action?

EPA has reexamined the 2020 AEZ Rule both in accordance with the Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (86 FR 7037, January 25, 2021), and in response to an error in the preamble of the 2020 AEZ Rule. As further discussed in Unit II.A.4., EPA discovered a factual error while compiling the administrative record in response to litigation. As a result of our reexamination of the 2020 AEZ Rule, EPA has determined that certain amended AEZ requirements in the 2020 AEZ Rule should be rescinded, with several protections from the 2015 WPS regulatory text being reinstated. EPA has determined that reinstatement of these protections from the 2015 WPS will be more effective at reducing potential exposures from ongoing pesticide applications and to promote public health for all populations and communities near agricultural establishments. In addition, EPA's analyses supporting the 2015 WPS have shown that these protections will better support the Agency's efforts to reduce disproportionate risks associated with agricultural pesticide exposures that currently fall on populations and communities with a history of environmental justice concerns, particularly agricultural employees (*i.e.,* workers and handlers), the employees' families, and the communities that live near establishments that use pesticides (Ref. 3). These protections are consistent with FIFRA's mandate to protect health and the environment against unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits. Reinstating the regulatory text for certain AEZ requirements from the 2015 WPS, as described in Unit II.B., II.C., and II.D., will be associated with minimal cost to the regulated community, as described in Unit I.E.

E. What are the incremental impacts of this action?

1. 2015 WPS Baseline Assessment

Since the 2020 AEZ Rule has not been implemented due to the court-ordered stay discussed in Unit II.A.4., the 2015 WPS continues to provide the operative regulatory language for the AEZ requirements during the current stay and any future extensions of the stay. Therefore, the Agency has determined that there will be no new impacts from the portions of this proposal seeking to reinstate the 2015 WPS provisions that make the AEZ applicable beyond the boundaries of an agricultural establishment and within easements on the agricultural establishment, as further described in Unit II.B. and II.C.

Additionally, this action proposes to reinstate the 2015 WPS criteria and factors for determining AEZ distances at 40 CFR 170.405(a) for ground spray applications, with the exception of language around a Volume Median Diameter (VMD) as a determining factor, which is further explained in Units II.D. and II.E. The Agency does not anticipate any new costs or impacts due to reinstating this regulatory language since the 2015 WPS remains in effect. However, the proposal to remove VMD from the AEZ criteria and instead use droplet size classifications (*i.e.,* ''medium'' as defined by the American National Standards Institute/American Society of Agricultural and Biological Engineers (ANSI/ASABE); see Units II.D. and E.) is expected to provide a clear, practical, and easy approach for determining AEZ and enclosed space

distances. EPA anticipates that this revision will improve compliance with other AEZ requirements and make it easier to enforce these provisions by eliminating any need to determine whether an application is over or under the specified VMD of 294 microns, as required by the 2015 WPS.

EPA is also proposing to maintain certain revisions that were presented in the 2020 AEZ Rule, such as the provision that clarifies that pesticide applications that were suspended due to individuals entering an AEZ may be resumed after those individuals have left the AEZ, and the exemption that allows farm owners and members of their immediate family (as defined in 40 CFR 170.305) to shelter within closed structures within an AEZ during pesticide applications, provided that the owner has instructed the handlers that only the owner's immediate family are inside the closed shelter and that the application should proceed despite their presence (further described in Unit II.F.). The revision to the AEZ suspension requirement better clarifies EPA's 2015 intent for how the AEZ provisions should work once there are no longer individuals other than pesticide handlers within an AEZ and does not result in any impacts. The immediate family exemption means that owners and their immediate family members do not have to leave their homes that are within an AEZ if the doors and windows remain closed. By proposing to retain the immediate family exemption, some applications will be simpler and less burdensome than the 2015 WPS since fewer applications would need to be suspended on family farms. The effect is likely small, as the change would only apply to immediate family members of the farm owner who are inside a structure and within the AEZ. The Agency finds that these changes are consistent with the intent of the AEZ in the 2015 WPS and are supported by the administrative record, particularly with regards to the immediate family exemptions that are applicable to other portions of the 2015 WPS. Maintaining these clarifications and flexibilities provide some regulatory relief that was sought after promulgation of the 2015 WPS without increasing exposure risks to workers or bystanders.

2. 2020 AEZ Rule Baseline Assessment

The 2020 AEZ Rule was initiated in response to feedback from members of the agricultural community, including the U.S. Department of Agriculture (USDA), state pesticide regulatory agencies, several agricultural interest groups, and from public comments. These comments raised concerns about the complexity and enforceability of the AEZ requirements after the 2015 WPS was promulgated. For the 2020 AEZ rule, EPA qualitatively described the benefit of the rule as a reduction in the complexity of applying a pesticide (Ref. 4). The benefits described were not monetary; revising the requirements would have reduced the complexity of arranging and conducting pesticide applications and enforcing the provisions. The benefits of the 2020 AEZ Rule would have resulted in reduced management complexity both on and off establishment, because there would have been fewer situations where the AEZ would have applied had the rule gone into effect (*i.e.,* the AEZ would not have been applicable off the establishment or for individuals within an easement on the establishment). EPA did not discuss any costs, or increased risk from pesticide exposure, in the 2020 AEZ Rule's supporting documents due its reliance on the ''Do Not Contact'' requirement that establishes the responsibility of the applicator to prevent pesticides from contacting people either directly or through drift. This is in part because the ''Do Not Contact'' provision (further described in Unit II.A.) is applicable in all situations, without limitations on distance or the individual's location respective to the application.

After reevaluating the 2020 AEZ Rule, the Agency has determined that the 2020 changes do not effectively balance the potential social and economic costs associated with limiting the AEZ requirements to areas under the owner's control and simplifying the distance criteria for ground-based spray applications. Based on careful reconsideration of the administrative record regarding the AEZ in the 2015 WPS and 2020 AEZ Rule, EPA has determined that the 2015 requirements regarding individuals off the establishment and within easements are more protective of workers and bystanders when implemented rather than relying on the ''Do Not Contact'' requirement as the only protective measure when individuals are outside of the owner's control.

Public comments submitted to the docket during the 2015 WPS rulemaking included examples of incidents where workers were exposed to pesticide applications from neighboring establishments as well as from the establishment where they were working. As noted in the 2015 WPS, out of 17 incidents identified in the comments, only one would have been prevented if the AEZ was limited to the boundaries of the agricultural establishment as it would have been established had the 2020 AEZ Rule gone into effect. EPA's analysis at the time indicated that the AEZ would have prevented at least four of the incidents reported in the 2015 comments, and possibly as many as 12, depending on the actual distances between the workers and application equipment. EPA continues to receive reports of incidents like those provided in past comments, despite the ''Do Not Contact'' requirement and the expectation that applicators and handlers must not spray pesticides in a manner that may result in contact with individuals. While the Agency is unable to quantify the number of new incidents that could be reduced by the AEZ, EPA believes, based on this information, that its original assessment of the AEZ in 2015 is the correct approach. The AEZ requirements serve as an important supplement to the ''Do Not Contact'' requirements and are expected to reduce the total number of exposures if implemented correctly and consistently. Therefore, EPA believes its proposal to reinstate the 2015 requirements to extend beyond the establishment's boundaries and within easements, better balances social and health-related costs than the 2020 AEZ Rule and outweighs the negligible costs on agricultural establishments to implement AEZs during an application.

In determining that the reinstatement of certain AEZ provisions from the 2015 WPS is warranted, EPA recognizes that an analysis of changes from the 2020 AEZ Rule and this proposed action is necessary. Compared to the 2020 AEZ Rule, the proposed changes in this rulemaking mean that more applications will have AEZs that encompass a greater area and therefore result in more situations where the AEZ will be applicable. Had the 2020 AEZ Rule been implemented, the 2020 AEZ Rule would have applied only in situations where people can be directed by the owner of the establishment, while the proposed changes in this rulemaking would apply in all situations, regardless of whether people may not be under the direction of the owner, such as individuals off the establishment or within easements. To effectively implement the changes in this proposal, owners and handlers may need to communicate more frequently with those nearby the establishment or within easements to ensure that nobody is within the AEZ and may require an application to be suspended or rescheduled. However, the impact of these changes on agricultural establishments is likely to be small compared to the 2020 AEZ Rule. Conversely, having the AEZ be

applicable in all directions, regardless of whether an individual is on or off the establishment, may simplify applications in the sense that the handler does not need to apply different requirements to different situations.

In addition, the 2020 AEZ Rule sought to establish a simplified 25-foot AEZ for all ground-based spray applications above 12 inches, regardless of the droplet size. This proposed rule reinstates the 2015 WPS criteria and factors for determining AEZ distances at 40 CFR 170.405(a) for ground spray applications, except for language around a Volume Median Diameter (VMD) as a determining factor as further explained in Unit II.D. If the 2020 AEZ Rule had gone into effect, the changes in this proposed rule may result in more complex application strategies, because the different AEZ distances may come into play more often and owners and handlers will have to consider more carefully the various application and nozzle characteristics. However, restoring the droplet size criteria back to the 2015 WPS language (*i.e.,* medium droplets as a threshold) results in increased protection from applications using fine sprays that are more susceptible to spray drift compared to the 2020 AEZ Rule. Additionally, EPA's proposal to not reinstate VMD as a criterion and instead rely on the ASABE standard's definition of ''medium'' droplet size better clarifies how to determine droplet sizes and should make it easier for applicators to understand the original requirements regarding how to achieve specific droplet classifications and how to implement the appropriate AEZ based on that information. As a result, the impact of these changes is expected to be small compared to the 2020 AEZ Rule.

As previously noted, EPA is proposing to retain certain changes made by the 2020 AEZ Rule, such as the provision that clarifies that pesticide applications that were suspended due to individuals entering an AEZ may be resumed after those individuals have left the AEZ, and the exemption that allows farm owners and members of their immediate family (as defined in 40 CFR 170.305) to shelter within closed structures within an AEZ during pesticide applications, provided that the owner has instructed the handlers that only the owner's immediate family are inside the closed shelter and that the application should proceed despite their presence (further described in Unit II.F.). These changes are consistent with the intent of the AEZ in the 2015 WPS and are supported by the administrative record, particularly with regards to the immediate family exemptions that are applicable to other portions of the 2015 WPS. Retaining these clarifications and flexibilities in this proposal provides some regulatory relief that was sought in the 2020 AEZ Rule without increasing exposure risks to workers or bystanders.

II. Proposed Changes to the WPS

A. Background and Existing Requirements

1. The Agricultural WPS

EPA implements FIFRA's mandate to limit adverse effects on human health in part through the WPS regulation codified at 40 CFR part 170. The WPS is a uniform set of requirements for workers, handlers, and their employers that are generally applicable to all agricultural pesticides and are incorporated onto agricultural pesticide labels by reference. The WPS is intended to reduce the risk of illness and injury to agricultural workers and pesticide handlers who may be exposed to pesticides while working. The WPS requirements are generally applicable to pesticides used in crop production agriculture and made applicable to certain pesticide products through FIFRA's pesticide product registration process by inclusion of a statement requiring WPS compliance on the product label. The WPS requirements complement the product-specific labeling restrictions and are intended to minimize occupational exposures generally. When a registered pesticide label includes a statement requiring compliance with the WPS, any failure to comply with the WPS when using a pesticide is a violation of FIFRA.

The risk reduction measures of the WPS may be characterized as being one of three types: information, protection, and mitigation. To ensure that employees will be informed about exposure to pesticides, the WPS requires that workers and handlers receive training on general pesticide safety, and that employers provide access to information about the pesticides with which workers and handlers may have contact. To protect workers and handlers from pesticide exposure, the WPS prohibits the application of pesticides in a manner that exposes workers or other persons, generally prohibits workers and other persons from being in areas being treated with pesticides, and generally prohibits workers from entering a treated area while a restricted-entry interval (REI) is in effect (with limited exceptions that require additional protections). In addition, the rule protects workers by requiring employers to notify them about areas on the establishment treated with pesticides through posted and/or oral warnings. The rule protects handlers by ensuring that they understand proper use of and have access to required personal protective equipment (PPE). Finally, the WPS has provisions to mitigate exposures if they do occur by requiring the employer to provide workers and handlers with an ample supply of water, soap, and towels for routine washing and emergency decontamination. The employer must also make transportation available to a medical care facility if a worker or handler may have been poisoned or injured by a pesticide and provide health care providers with information about the pesticide(s) to which the person may have been exposed.

2. History of the AEZ Requirements

In 2015, EPA promulgated a final rule that comprehensively revised the WPS for the first time since 1992 (Ref. 2). The 2015 WPS added several pesticide-related safety measures and strengthened elements of the existing regulation in areas including training, notification, pesticide safety and hazard communication information, use of PPE, and implemented requirements for providing supplies for routine washing and emergency decontamination.

Under the WPS established in 1992 (57 FR 38101, August 21, 1992 (FRL–3374–6)), the pesticide handler's employer and the pesticide handler were required to ensure that no pesticide is applied in a manner that may contact, either directly or through drift, any agricultural worker or other person, other than an appropriately trained and equipped pesticide handler involved in the application. This prohibition is often referred to as the ''Do Not Contact'' provision and is applicable in all situations, without limitations on distance or location of the individuals. This particular provision was carried over into the 2015 WPS revisions and has remained unchanged.

Among other changes to improve public health and to build upon the existing protections of the 1992 WPS, the 2015 WPS established AEZ requirements for outdoor production application to reinforce the existing ''Do Not Contact'' provision and to enhance overall compliance with safe application practices intended to protect agricultural workers and bystanders from pesticide exposure from sprays and drift. The AEZ is an area surrounding the point(s) of pesticide discharge from the application equipment that must generally be free of all persons during pesticide applications, moves with the

application equipment while the application is ongoing, and ceases to exist around the equipment once the pesticide application ends. After the application has been completed or the application equipment has moved on to a new area, entry restrictions associated with treated areas go into effect.

The 2015 WPS requirement at 40 CFR 170.505(b) required pesticide handlers (applicators) making a pesticide application to temporarily suspend the application if any worker or other person, other than trained and equipped handlers assisting in the application, was within the AEZ. The 2015 WPS revisions further required a handler to suspend an application if a worker or other person was in any portion of the AEZ—on or off the establishment. These restrictions were intended to bolster the protections afforded by the ''Do Not Contact'' provision, promote an application approach aimed at reducing incidents in which people in areas adjacent to pesticide applications could be affected by either direct contact or drift, and establish a well-defined area from which people generally must be excluded during ongoing applications. The AEZ requirement was one of the many public health protection tools incorporated into the 2015 WPS rule to emphasize one of the key safety points in both the WPS and on pesticide labels—do not spray people.

As outlined in the 2015 WPS, the size of the AEZ was dependent largely on the application method used. For aerial, air blast, fumigant, smoke, mist, and fog applications, as well as sprays using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns), the area encompassed 100 feet from the application equipment in all directions. For other applications sprayed from a height of greater than 12 inches from the planting medium using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater), the area encompassed 25 feet from the application equipment in all directions. For all other applications, there was no AEZ.

3. The 2020 AEZ Rule Modifying the AEZ Provisions of the 2015 WPS

On October 30, 2020, EPA finalized updates to the AEZ provisions under the WPS (Ref. 1). The 2020 AEZ Rule modified the AEZ requirements to limit the AEZ to an agricultural employer's property where an agricultural employer can lawfully exercise control over employees or bystanders who may be within the AEZ during an application, and to simplify the criteria for determining the AEZ distances for ground spray applications. In addition, clarifications were made on when applications may resume after being suspended due to someone entering the AEZ, as well as providing an exemption for farm owners and their immediate family from having to leave their homes or another enclosed structure when it is located within an AEZ. The 2020 AEZ Rule revisions did not include any changes to the ''Do Not Contact'' provision in the WPS, which still prohibited applying pesticides in a manner that may result in contact either directly or through drift. The rule was set to go into effect on December 29, 2020.

4. Actions Seeking Judicial Review

As explained in the **Federal Register** of May 16, 2022 (87 FR 29673; FRL–9803–01–OCSPP), two civil actions were filed in the U.S. District Court for the Southern District of New York (S.D.N.Y.) on December 16, 2020, challenging the 2020 AEZ Rule (now consolidated as case number 1:20–cv–10642). Additionally, two petitions for review were filed in the U.S. Second Circuit Court of Appeals on December 17, 2020 (case numbers 20–4174 and 20–4203), which have been held in abeyance pending the proceedings in the district court.

On December 28, 2020, S.D.N.Y. issued an order granting plaintiffs' request for a temporary restraining order (TRO) and injunctive relief (Ref. 5). The court's order stayed the December 29, 2020, effective date of the 2020 AEZ Rule and enjoined all EPA authorities who would otherwise take action to make the 2020 AEZ Rule effective from doing so. Following the December 2020 Order, S.D.N.Y. has issued several additional orders consented to by both EPA and the plaintiffs, further extending the preliminary injunction and staying all proceedings in the case (*e.g.,* Ref. 6). As a result, the 2020 AEZ Rule has not gone into effect. In the course of compiling the administrative record for purposes of the litigation, EPA discovered a factual error in the preamble of the 2020 AEZ Rule regarding the scope of existing handler training on the AEZ and how to implement the AEZ when individuals are in areas not under the control of the agriculture establishment's owner. As further discussed in Unit II.A.5., the discovery of this factual error has contributed in part to EPA's reconsideration of the 2020 AEZ Rule.

5. EPA's Reconsideration of Certain 2020 AEZ Rule Amendments

Concurrent with the ongoing litigation described in Unit II.A.4., the 2020 AEZ Rule was included among several EPA actions identified for review in accordance with E.O. 13990 (Ref. 7). In the course of reviewing both the 2015 WPS and 2020 AEZ Rules in accordance with E.O. 13990, EPA has found that some of the 2020 revisions to the AEZ requirements, specifically, the 2020 AEZ Rule's simplification of AEZ distance requirements (see Unit II.D.) and the limitation of the applicability of the AEZ requirements to the agricultural establishment's boundaries (see Units II.B. and C.), are inconsistent with the objectives of protecting against unreasonable adverse effects on human health and the environment and limiting exposure to dangerous chemicals and pesticides for all populations, including those who may experience disproportionate burden or risks such as workers, handlers, and those who live, work, or play on or near agricultural establishments.

Furthermore, while preparing the administrative record for litigation, EPA discovered a factual error contained in the preamble of the 2020 AEZ Rule regarding the scope of AEZ content within EPA-approved trainings. Specifically, the preamble to the 2020 AEZ Rule states that ''EPA-approved trainings since 2018 . . . have also incorporated EPA's 2016 guidance on how to apply pesticides near establishment borders and provide information on various measures applicators or handlers can take to prevent individuals from being contacted by spray or through drift,'' and listed examples of such measures (Ref. 1). This assertion in the 2020 AEZ Rule was in error. While all EPA-approved trainings are in compliance with the WPS because they address the minimum requirements of the AEZ (40 CFR 170.501), after reevaluating the rule, EPA has determined that some of the trainings it has approved since 2018 only contained a partial set of the topics provided in guidance (Ref. 8) regarding best pesticide application practices near the borders of an establishment and on potential measures that can be used to prevent contact through drift. Therefore, the reliance on this inaccurate assumption provides further reason to reinstate the 2015 requirements regarding the applicability of AEZs for individuals off the establishment and within easements.

As a result, EPA proposes to make certain modifications to the AEZ requirements established in the 2020

AEZ Rule by reinstating the protections as originally established in the 2015 WPS. The proposed revisions aim to reestablish the level of protections afforded to all who are on an agricultural establishment and may be within the vicinity of an ongoing application, with slight modifications to support compliance and understanding. These revisions would be limited to the following three modifications made in the 2020 AEZ Rule: the limitation of the AEZ requirements to the area within the property's boundaries that are under the agricultural employer's control, the exception to the suspension and exclusion requirements due to the presence of someone within an area subject to an easement when the person has the legal right to access that area, and the reduction of the AEZ distance from 100 feet to 25 feet for certain ground-based sprays. These three provisions would essentially revert to their status under the 2015 WPS revision, although EPA is not proposing to reinstate references to VMD that are no longer current.

Some changes made by the 2020 AEZ Rule would remain in place under this proposal. For example, the 2020 AEZ Rule amendment which states that pesticide applications that have been suspended due to individuals entering an AEZ may be resumed after they have left the AEZ was supported both by the administrative record and public comments, because it provides needed clarity that was previously missing in the 2015 WPS. Additionally, the 2020 AEZ Rule added an exemption that allows farm owners and their immediate family to shelter inside closed structures within an AEZ during pesticide applications, provided that the owner has instructed the handlers that only the owner's immediate family are inside the closed shelter and that the application should proceed despite their presence. The rationale for the immediate family exemption in the 2020 AEZ Rule is consistent with the other immediate family exemptions established under the 2015 WPS (Ref. 1).

B. Revisions To Reinstate the Applicability of the AEZ to Off-Establishment Areas

1. Proposed Changes

EPA proposes to revise the AEZ provision at 40 CFR 170.505(b) that requires handlers to ''suspend the application'' if a worker or other person is in the AEZ by removing clauses limiting its effect to persons only within the boundaries of the agricultural establishment. EPA also proposes to make conforming revisions to the handler training requirements at 40 CFR 170.501(c)(3)(xi), and the exemptions at 40 CFR 170.601(a)(1)(vi) to reflect the applicability of the AEZ both on and off the establishment.

The AEZ requirements apply to both handlers and agricultural employers, and in the 2015 WPS they applied to each differently, reflecting the different responsibilities and authorities of handlers and agricultural employers. For pesticide handlers, the AEZ requirement at 40 CFR 170.505(b) in the 2015 WPS required handlers making a pesticide application to temporarily suspend the application if any worker or other person (besides trained and equipped handlers assisting in the application) was in the AEZ, the boundaries of which were described in terms of distance from the application equipment per 40 CFR 170.405(a)(1). Thus, the handlers' obligation to suspend applications under the 2015 WPS applied if a worker or other person was in any portion of the AEZ, on or off the establishment, reflecting the handlers' responsibilities under the ''Do Not Contact'' requirement. In contrast, the agricultural employers' obligation regarding the AEZ in the 2015 WPS was that ''the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the treated area or an AEZ that is within the boundaries of the establishment until the application is complete.'' 40 CFR 170.405(a)(2) (2015 version). This responsibility reflected the difference in agricultural employers' ability to control the movements of persons and to protect their workers on their property versus persons beyond the property borders where agricultural employers do not have control over their presence.

The difference between handlers' and agricultural employers' AEZ responsibilities under the 2015 WPS was a source of confusion for some stakeholders during the Agency's early outreach efforts after the 2015 WPS. Additionally, the handlers' responsibility to suspend application if a person or passing vehicle was within the AEZ, but not at risk of exposure, was viewed by some as an unreasonable burden, particularly before EPA clarified through guidance (Refs. 8, 9) that such applications could continue once the handlers have evaluated the situation and determined whether the application can resume without contacting anyone with the pesticide. The 2020 AEZ Rule changed 40 CFR 170.505(b) to limit the AEZ to the area within the boundaries of the agricultural establishment, bringing the pesticide handlers' duty to suspend applications into line with the agricultural employers' duty to exclude persons from the AEZ in 40 CFR 170.405(a)(2).

After reconsidering the comments submitted in response to the AEZ proposal in 2019 and reevaluating the information from the administrative record in both the 2015 WPS and 2020 AEZ Rule, EPA has determined that the AEZ provisions from the 2015 WPS provide a valuable complement to the ''Do Not Contact'' requirements, along with the other protections on pesticide labels, to protect workers and bystanders both on and off the establishment from being contacted by pesticides that are applied. Generally, incident data provided to the Agency lacks critical details to make firm correlations between whether a properly implemented AEZ would have prevented a contact from occurring, and often incidents are underreported or cited only on the basis of a contact occurring, so it is difficult for the Agency to fully assess and quantify the successes and benefits of the AEZ. EPA's best estimates came from comments submitted during the 2015 WPS rulemaking efforts (Ref. 2) citing 17 incidents where workers were exposed to pesticides due to drift. In assessing these incidents during the 2015 WPS rulemaking, only one of those incidents could have potentially been prevented if the AEZ were limited to the boundaries of the agricultural establishment. However, proper implementation of the AEZ requirements for individuals both on and off the establishment may have prevented at least four of the incidents reported in those comments, and potentially as many as 12, depending on the actual distances between the workers and application equipment, which were not specified in the comments at that time.

In the 2015 WPS, EPA determined that the AEZ requirements were a necessary supplement to the existing ''Do Not Contact'' provision, because they gave the applicator specific criteria for suspending an application when people other than handlers are near ongoing applications and potentially within the AEZ. In addition to providing greater protections for workers and bystanders, the current AEZ requirements are useful to applicators attempting to comply with the existing ''Do Not Contact'' requirement beyond the boundaries of the agricultural establishment. Having an AEZ in effect in all directions during an application will simplify handler responsibilities, as handlers will only be

expected to adhere to one distance for a given application type, instead of two distinct requirements during the application (one within the boundaries of the establishment and one for when the application equipment is near the establishment's boundaries). EPA finds that maintaining a consistent shape and size for an application is likely less confusing to handlers during the application and is easier to convey in handler trainings than having different requirements for on- and off-establishment situations. This approach will also help to promote the ''Do Not Contact'' requirement to not spray people during applications.

EPA's risk assessments and registration decisions are based on the premise that the label is followed and that the WPS protections effectively prevent people (workers and bystanders) from being contacted by pesticide applications. In other words, incidents where workers or bystanders are sprayed directly result in people being exposed to pesticides in a way that is not typically considered in EPA's risk assessments or registration decisions. While these types of incidents are misuse violations, public commenters to the 2020 AEZ Rule cited several examples of incidents after the 2015 WPS was finalized, showing these types of incidents continue to occur. Therefore, there remains a need to supplement the existing ''Do Not Contact'' provision to reduce exposures to workers and other persons from being directly sprayed with pesticides, including those who may be off the establishment.

2. Anticipated Effects

As explained in Unit II.A.4., the 2020 AEZ Rule never went into effect due to a series of court orders staying the effective date of the 2020 AEZ final rule. However, in determining that the reinstatement of certain AEZ provisions from the 2015 WPS is warranted, EPA recognizes that an analysis of changes from the 2020 AEZ Rule and this proposed action is necessary. While the discussion in this section compares the effects of the currently proposed changes to the 2020 AEZ final rule, the AEZ requirements have always extended beyond the boundary of an agricultural establishment since it originally went into effect in 2015. Therefore, given that the 2015 rule has remained in effect since its establishment, there are no new impacts expected with this proposed rule.

Revising the requirement so that applicators must suspend an application for individuals within an AEZ outside the boundary of the agricultural establishment is anticipated to have little effect on the costs of pesticide applications. Although the proposed changes have the potential to increase the number of situations where applications would need to be evaluated and potentially suspended compared to the intent of the 2020 AEZ Rule, the proposed AEZ changes would only apply in the specific instances when people are within the AEZ. In those cases, an applicator must temporarily suspend and may have to reschedule an application to avoid potential contact. This could lead to more complex application strategies or require increased communication with people nearby to get them to move outside the AEZ before resuming an application. However, the proposed AEZ provisions will provide the applicator specific criteria for suspending an application without needing to know the specific boundary of the property, which may make it easier for the applicator to comply with the requirement that applications should be suspended if anyone is within the vicinity of the application.

EPA is unable to quantify how much pesticide exposure will change from no longer restricting the AEZ to the establishment. In addition to the AEZ, the ''Do Not Contact'' provision, whereby the pesticide handler's employer and the pesticide handler are required to ensure that no pesticide is applied in a manner that may contact, either directly or through drift, any agricultural worker or other person, other than an appropriately trained and equipped pesticide handler involved in the application. This prohibition is applicable in all situations, without limitations on distance or location of the individuals. The AEZ is an additional precaution to limit unintended pesticide exposure and to complement other protections for workers and bystanders both on and off the establishment from being contacted by pesticides. Consistent with the 2015 WPS, EPA believes that reinstating the applicability of the AEZ to off-establishment situations to support the ''Do Not Contact'' requirements will help reduce the number of exposures of workers and other non-handlers to unintentional contact to pesticide applications. Therefore, the social and economic benefits of these requirements outweigh the negligible costs to implement them.

3. Comments Sought on This Proposal

The Agency is interested in comments regarding the proposal to reestablish the applicability of the AEZ for situations when people may be within an AEZ outside of the establishment's boundaries and its efforts to improve understanding and compliance with this requirement. While this rulemaking is intended to reinstate protections for off-establishment individuals that were reduced in the 2020 AEZ Rule, EPA understands that some of the concerns raised in the 2020 AEZ Rule regarding the implementation and enforcement of off-establishment AEZs will persist without additional guidance or future rulemaking to clarify the Agency's expectations for this particular provision. EPA is interested in comments on how to improve its existing guidance (Ref. 8) on the AEZ implementation for off-establishment individuals and whether the approaches outlined in the existing guidance reflect a reasonable approach to resuming applications for those off the establishment and not under an agricultural employer's control. EPA is also interested in how to improve handler trainings to ensure that AEZs and the ''Do Not Contact'' provisions are presented in a way that is easily understood, enhances compliance, and ensures that handlers have the information and tools needed to protect those who may be near pesticide applications. Additionally, EPA is interested in feedback on other options or approaches that could help to address the concerns of state enforcement agencies or agricultural stakeholders without diminishing AEZ protections for people in all areas adjacent to ongoing applications.

C. Revisions To Remove Provisions Making the AEZ Inapplicable in Easements Within Agricultural Establishments

1. Proposed Changes

EPA proposes to remove language from the 2020 AEZ Rule provisions at 40 CFR 170.405(a)(2)(ii) and 170.505(b)(1)(ii) and (b)(2)(ii) that make the AEZ requirements inapplicable in easements within the agricultural establishment.

Portions of agricultural establishments may be subject to easements (*e.g.,* right-of-way, gas, mineral, utility, wind/solar energy) such that some persons (*e.g.,* utility workers) may have a legal right to be on parts of an agricultural establishment independent of the agricultural employer's control. In 2015, EPA presumed that all persons on an agricultural establishment would be subject to the control of the owner or agricultural employer, not recognizing the prevalence of easements which deprive the landowner of the ability, in

whole or in part, to control the movement of persons within the easement. The 2015 WPS made no exception for such easements. The 2020 AEZ Rule revised the WPS so that agricultural employers are not required to exclude, and handlers are not required to suspend applications for, persons not employed by the establishment who are in the AEZ in an area subject to an easement that prevents the agricultural employer from temporarily excluding those persons from that area.

The purpose of the easement exception was to ensure that the presence of persons who have a legal right to be on parts of an agricultural establishment independent of the agricultural employer's control should not be an insurmountable obstacle to pesticide application, provided the pesticide could be applied without contacting such persons (Ref. 1). This easement exception was based on a determination that the ''Do Not Contact'' requirement was sufficiently protective of persons in easements within the agricultural establishment. In line with the decision to not limit the AEZ to the boundaries of the agricultural establishment as discussed in Unit II.B., EPA has determined that the AEZ should also not be limited only to those areas where the agricultural employer can exclude people, and thereby should be applicable to easements within the agricultural establishment. Having the AEZ requirements apply in easements within the establishment aligns with the ''Do Not Contact'' provision and increases the protection for workers and bystanders in all areas of the establishment.

2. Anticipated Effects

As explained in Unit II.A.4., the 2020 AEZ Rule never went into effect due to court orders staying the effective date of the 2020 AEZ final rule. However, in determining that the reinstatement of certain AEZ provisions from the 2015 WPS is warranted, EPA recognizes that an analysis of changes from the 2020 AEZ Rule and this proposed action is necessary. While the above discussion in this section compares the effects of the currently proposed changes to the 2020 AEZ final rule, the AEZ requirements have always extended to easements on an agricultural establishment since they originally went into effect in 2015. Therefore, given that the 2015 WPS has remained in effect since its establishment, there are no new impacts expected with the revision.

Revising the AEZ requirements so that applicators must suspend applications when people are inside an AEZ while in an area subject to an easement is anticipated to have little effect on the costs of pesticide application. Although this change has the potential to increase the complexity of pesticide applications, this requirement would only apply to specific instances in which people are within an easement that is also within the AEZ. In those cases, an owner or an applicator may have to reschedule an application, temporarily suspend applications, or communicate with people subject to an easement to move them outside of the AEZ, which could in turn lead to more complex application strategies. However, the proposal to reinstate the 2015 AEZ requirements will provide the applicator with specific criteria for suspending applications without needing to consider exceptions for easements and the location of those boundaries, which may make it easier for the applicator since the AEZ will therefore extend from the application in all directions, regardless of easements.

Since EPA is unaware of any pesticide exposure incidents involving individuals on an easement, EPA is unable to quantify how incidents of exposure will be affected by reinstating the 2015 AEZ regulatory text that would, in effect, make the AEZ applicable within easements on an agricultural establishment. As described previously, the ''Do Not Contact'' provision is applicable in all situations, without limitations on distance or the location of the individuals. The AEZ is an additional precaution to limit unintended pesticide exposure, intended to complement other protections for workers and bystanders. Despite the gap in available information, the Agency anticipates that reinstating the AEZ as finalized in the 2015 WPS will help to reduce potential exposures for those in easements if implemented properly.

3. Comments Sought on This Proposal

The Agency is interested in comments regarding the proposal to reestablish the applicability of the AEZ for people who may be in an area subject to an easement that falls within an AEZ and its efforts to improve understanding and compliance with this requirement. While this rulemaking intends to reinstate protections that were reduced in the 2020 AEZ Rule for individuals within an area subject to an easement, EPA understands that some of the concerns raised in the 2020 AEZ Rule regarding the implementation and enforcement of AEZs will persist without additional guidance or future rulemaking to clarify the Agency's expectations for this particular provision. EPA is interested in comments on how to improve its guidance on the implementation of AEZ protections for those within easements, and whether the approaches outlined in the existing guidance reflect a reasonable approach to resuming applications when those within easements and not under an agricultural employer's control. EPA is also interested in how to improve handler trainings to ensure that AEZs and the ''Do Not Contact'' provisions are presented in a way that is easily understood, enhance compliance, and ensure protection for those who may be within an easement. Additionally, EPA is interested in feedback on what other options or approaches could help address the concerns of state enforcement agencies or agricultural stakeholders without diminishing AEZ protections for people in areas subject to an easement.

D. Revisions To Reinstate 2015 AEZ Distance Requirements for Certain Ground-Based Sprays

1. Proposed Changes

EPA is proposing to reinstate the 2015 WPS criteria and factors for determining AEZ distances at 40 CFR 170.405(a) for ground spray applications, except for language around a Volume Median Diameter (VMD) as a determining factor. The 2020 AEZ Rule sought to simplify the AEZ requirements for ground spray applications by eliminating the language pertaining to spray quality and droplet size and VMD as criteria for determining the appropriate AEZ distance. This had the effect of establishing a single 25-foot AEZ for all ground-based spray applications made from a height greater than 12 inches from the soil surface or planting medium, irrespective of droplet size.

This proposed rule would reinstate language from the 2015 WPS that set AEZ distances based on the spray quality (droplet spectrum) sizes and spray height for certain pesticide application methods. Despite the Agency's efforts in the 2020 AEZ Rule to develop a simplified approach that was easier to understand and implement, EPA has reconsidered several studies cited by commenters (Refs. 10, 11, 12, 13) in response to EPA's 2019 AEZ Proposed Rule (Ref. 14) that show that pesticide applications using sprays with droplets smaller than medium (*i.e.,* fine or smaller droplet sizes) are prone to drift greater than 25 feet. After reconsidering the comments and the information submitted to the Agency during the 2019 public comment period and reevaluating the

information in the administrative record for the 2015 WPS rule, EPA has determined that the 100-foot AEZ for sprays with droplets smaller than medium is needed to provide protection to workers or bystanders near these fine-spray applications. As a result, the Agency is proposing to reestablish AEZ distances of 100 feet for sprays using a spray quality (droplet spectrum) of smaller than medium, and a 25-foot AEZ for ground applications sprayed from a height greater than 12 inches from the soil surface or planting medium using a spray quality (droplet spectrum) of medium or larger.

EPA is proposing, however, to incorporate the droplet size categories of all versions of the American National Standards Institute/American Society of Agricultural and Biological Engineers (ANSI/ASABE) Standard 572 (S572) by reference in § 170.405, including ANSI/ASABE S572.1, ANSI/ASABE S572.2, and ANSI/ASABE S572.3, to give meaning to the ''medium'' droplet size criterion instead of using the VMD values from the 2015 WPS. Because a similar approach using droplet size classifications was used in 40 CFR 170.405(b) when establishing entry restrictions during enclosed space production under the 2015 WPS, EPA is also proposing to remove VMD as a criterion for enclosed space production and instead rely on these ANSI/ASABE standards to ensure consistency between outdoor production requirements and enclosed space production requirements. The rationale for incorporating these standards by reference is further discussed in Unit II.E.

While EPA proposes to reinstate the 2015 WPS criteria for determining AEZ distances based on the droplet size and spray height, EPA reiterates that the application of a pesticide in a manner inconsistent with its labeling is a violation of FIFRA. Regardless of the droplet size criteria for the AEZ distances presented in 40 CFR 170.405(a) and the entry restriction distances for enclosed space production in 40 CFR 170.405(b), individual product labels may specify different, more protective product-specific restrictions that must be followed during the application. Pesticide users must comply with all the requirements in 40 CFR part 170, except those that are inconsistent with product-specific instructions on the pesticide product labeling.

2. Anticipated Effects

In this proposal, EPA is changing the determinants of the size of the AEZ. In some cases, such as where the handler is spraying a pesticide product with droplet sizes smaller than medium (*i.e.,* fine droplets), the size of the AEZ would have been 25 feet under the 2020 AEZ Rule. This proposal would reestablish the 2015 WPS regulatory text that set a distance of 100 feet for these applications. For sprayed applications using medium or larger droplets sprayed above 12 inches, the distance remains 25 feet, which is the same distance for these applications in both the 2015 WPS and the 2020 AEZ Rule.

Reinstating the different AEZ distances from the 2015 WPS for ground-based sprays based on droplet sizes is more complex than the 2020 AEZ for some growers, because handlers will have to assess droplet size and use that information to determine the correct size of the AEZ. However, the change in size only makes a difference for applications using a fine spray in the specific instances when people are between 25 and 100 feet from the application equipment. In those cases, an applicator would have had to reschedule an application or temporarily suspend applications until individuals leave the area. Retaining the droplet size criteria from the 2020 AEZ Rule may have made it simpler for handlers to know or understand the criteria for the AEZ, without having to know the specific characteristics of specific nozzles and applications, but it would also be less protective than the requirements of the 2015 WPS for applications using a fine droplet spray. In determining that the reinstatement of certain AEZ provisions from the 2015 WPS is warranted, EPA recognizes that an analysis of changes from the 2020 AEZ Rule and this proposed action is necessary. However, since the 2020 AEZ Rule has not gone into effect, there are no new impacts expected with the revision, and all costs associated with reinstating the 2015 WPS regulatory language are expected to be negligible.

3. Comments Sought on This Proposal

The Agency is interested in comments regarding the proposal reestablish 25- and 100-foot AEZ for ground-based sprays based on droplet size and spray height criteria. EPA is also interested in comments on the proposal to not reinstate the VMD as a criterion for determining 25- versus 100-foot AEZ distances, and whether the proposal to base AEZ distances on a classification category threshold of medium defined by the ANSI/ASABE standard and spray height still achieves the same protection that was provided in the 2015 WPS. Additionally, EPA is interested in information on whether incorporating the ANSI/ASABE standards by reference into the regulations to better define ''medium'' droplet sizes is adequate. The Agency is also interested in whether additional guidance for handlers/applicators conveying the value of using nozzle manufacturer guides and manuals to determine droplet sizes that are consistent with the ANSI/ASABE standard's definition of ''medium'' is needed to provide enough clarity to the regulated community on how to make an AEZ or enclosed space application distance determination for a given application. EPA is interested in feedback on whether incorporating the droplet classification category of medium from ANSI/ASABE is as well understood in the agricultural community as the Agency believes it to be, and whether this promotes a simplification to the requirements without diminishing protections. While this rulemaking is intended to reestablish protections from the 2015 WPS, the Agency is also interested in additional information for future consideration of the AEZ requirements regarding appropriate AEZ distances for different application methods.

E. Incorporation by Reference

EPA identified an applicable voluntary consensus standard for defining droplet size. Instead of fully reinstating the droplet size criteria established in the 2015 WPS, EPA is proposing to incorporate S572.3, Spray Nozzle Classification by Droplet Spectra, and its preceding editions by reference to enhance the Agency's compliance with the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 *note*). The NTTAA and Office of Management and Budget (OMB) Circular A–119 require agencies to use voluntary consensus standards in its regulatory, procurement, and program activities in lieu of government-unique standards, unless use of such standards would be inconsistent with applicable law or otherwise impractical.

1. Summary of Applicable Voluntary Consensus Standard

The American Society of Agricultural and Biological Engineers (ASABE) Standard S572 and updates of that standard were developed by ASABE and approved through the American National Standards Institute (ANSI). The standard defines droplet spectrum categories for the classification of spray nozzles, relative to specified reference fan nozzles discharging spray into static air or so that no stream of air enhances atomization. The purpose of classification is to provide the nozzle user with droplet size information

primarily to indicate off-site spray drift potential and secondarily for application efficacy. The standard established a basis for relative nozzle comparisons only based on droplet size. The standard does not address other spray drift and application efficacy factors, such as droplet discharge trajectory, height, and velocity; air bubble inclusion; droplet evaporation; and impaction on target. As discussed in Unit. II.E.2., the ASABE categorization of ''medium'' droplet sizes is mostly unchanged despite various updates to the standard in recent years. Given the relative stability of the categorization of ''medium'' droplet sizes, EPA proposes to incorporate by reference the current and all previous versions of S572 to establish the droplet spectrum requirements of § 170.405.

2. Reasons To Incorporate Current and Previous Versions of the Standard by Reference

EPA decided to reinstate the distance criteria based on a ''medium'' droplet size cutoff and height, but not VMD, for several reasons. The description of the droplet size/spectrum in the 2015 WPS language in 40 CFR 170.405(a)(1) and (b)(4) included a numerical value of 294 microns for the VMD. The oldest version of the ASABE standard S572 for which these requirements were originally based on defined the droplet spectrum in six categories and included numerical values for the VMD (Ref. 15). However, the ASABE standard has been revised several times, in 2009, 2018, and 2020 (Refs., 16, 17, 18). The most current standard now defines the droplet sizes into eight classification categories and no longer includes the numerical VMD values that were the basis for the specific criteria in the 2015 WPS requirements at 40 CFR 170.405(a)(1) and (b)(4). The classification categories now include a range of VMDs to define ''medium'' as opposed to a specific VMD value. The categorization of ''medium'' droplet sizes throughout the ASABE standards, however, have remained largely the same.

The ASABE classifications and categories are generally well understood by the regulated community and are referenced in several places, including on some EPA pesticide labels as they are revised during EPA's Registration Review process. Additionally, droplet classifications from the ASABE standards are also referenced in nozzle manufacturers' selection guides to assist applicators in determining which nozzles and spray characteristics will produce various droplet sizes that are consistent with the ASABE classifications.

The ASABE classification categories have defined droplet size categories for the classification of spray nozzles relative to the specified reference fan nozzle. The purpose of classification is to provide the nozzle user with droplet size information primarily to indicate off-target spray drift potential and secondarily for application efficacy. Nozzle manufacturers often provide the necessary information in their selection guides to place their nozzle types into a droplet size category (Extremely Fine (XF), Very fine (VF), Fine (F), Medium (M), Coarse (C), Very Coarse (VC), Extremely Coarse (EC), and Ultra Coarse (UC)) based at least on orifice size and pressure. The color code associated with droplet size classification categories in the ASABE standard has become commonly understood and is often the same color code currently used in nozzle manufacturer guides on speed, pressure, and nozzle type. EPA notes, however, that these colors may not always reflect the color of the nozzle itself, so care must be taken by applicators when reviewing these guides to determine the correct droplet size for a particular nozzle or nozzle configuration. EPA believes that AEZ and enclosed space distances using a droplet size of ''medium'' can be determined quickly and simply when referring to these guides and manuals, which is reflective of how applicators and handlers typically ascertain this information in preparation for applications.

Therefore, simplifying the requirements to be based on droplet size categories alone provides a clear and easy approach for determining an AEZ or enclosed space distance, and makes it easier to enforce the requirements without the complexity of determining whether an application is over or under a VMD of 294 microns as required in 2015 WPS. Additionally, EPA will consider developing additional guidance as needed to specify that the information necessary to achieve the desired droplet size based on ASABE's definition of ''medium'' can be obtained through the nozzle manufacturers' guides where the characteristics for the particular nozzle are typically provided.

3. Reasonable Availability

Copies of this standard may be purchased from the ASABE, 2950 Niles Road, St. Joseph, MI 49085, or by calling (269) 429–0300, or at *https://www.asabe.org.* Additionally, each of these standards are available for inspection at the OPP Docket in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA, West Bldg., 1301 Constitution Ave. NW, Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room and the OPP Docket is (202) 566–1744. For information about the electronic availability of this standard for public review in read-only format during the public comment period, visit *https://www.epa.gov/pesticide-worker-safety/worker-protection-standard-application-exclusion-zone.* EPA has determined that the standard and its predecessor versions are reasonably available to the class of persons affected by this rulemaking.

If you have a disability and the format of any material on an EPA web page interferes with your ability to access the information, please contact EPA's Rehabilitation Act Section 508 (29 U.S.C. 794d) Program at *https://www.epa.gov/accessibility/forms/contact-us-about-section-508-accessibility* or via email at *section508@epa.gov.* To enable us to respond in a manner most helpful to you, please indicate the nature of the accessibility issue, the web address of the requested material, your preferred format in which you want to receive the material (electronic format (ASCII, etc.), standard print, large print, etc.), and your contact information.

F. Retention of the 2020 AEZ Rule's Suspension Clarification and the Immediate Family Exemption

1. Summary of the Retained Provisions From the 2020 AEZ Rule

EPA is proposing to retain the 2020 AEZ Rule's revisions to clarify when applications that have been suspended due to someone being within the AEZ can be resumed, and the family exemption for owners and their immediate family members to remain within an AEZ provided they are inside a closed house or structure.

In the 2020 AEZ Rule, EPA revised 40 CFR 170.505(b) to clarify that handlers may resume a suspended application provided that no workers or other persons (other than appropriately trained and equipped handlers involved in the application) remain in the AEZ. Commenters in response to the 2019 AEZ Proposed Rule were supportive of this change, because it provided the needed clarity for EPA's intent of the suspension requirement. Therefore, EPA intends to maintain this revision in the 2020 AEZ Rule and will only address the language in 40 CFR 170.505(b) regarding off-establishment individuals

and those within easements as discussed in Unit II.B. and C.

EPA also proposes to maintain the immediate family exemption at 40 CFR 170.601, which exempts owners and their immediate family members from having to leave the AEZ when they remain inside closed buildings, housing, or shelters on the establishment during pesticide applications. This exemption also permits handlers the ability to proceed with an application when owners or their immediate family members remain inside closed buildings, housing, and structures, provided that the owner has expressly instructed the handler that only the owner and/or their immediate family members remain inside the closed building and that the application can proceed despite the owner and their immediate family members' presence inside the closed building. Handlers, under this exemption, would have to receive this information from the owner of the establishment prior to application and cannot assume that only the owner's family are inside without that assurance. The Agency believes this approach is consistent with the 1992 and 2015 WPS rationales for providing exemptions to the WPS for family farms because the Agency expects owners of agricultural establishments will take all steps necessary to protect their own immediate family members, and the exemption gives owners flexibility to provide those protections by sheltering immediate family members in enclosed structures within an AEZ.

2. Comments Sought on This Proposal

While EPA intends to retain these provisions from the 2020 AEZ Rule, EPA is interested in any new information that might be available for the Agency to consider ensuring that these provisions are adequately protective while meeting the needs of stakeholders. EPA also seeks input on what the Agency can do to ensure that the expectations of these provisions are clear and enforceable. For example, EPA is interested in feedback on whether any additional guidance or future revision is needed to ensure that the intent of the immediate family exemption from the AEZ requirements is properly implemented. EPA is also interested on the clarity and enforceability of the immediate family exemption, particularly regarding handlers who have been ''expressly instructed'' by the owner to proceed with an application.

G. Options Considered but Not Proposed

The Agency considered rescinding the 2020 AEZ Rule in its entirety and reinstating the WPS in full as finalized in 2015, but the Agency has determined that certain provisions of the 2020 AEZ Rule have merit and support in the administrative record. The Agency has determined that this rulemaking presents the best opportunity to ensure that protections from the 2015 WPS are expeditiously reinstated into the regulatory text, while preserving the meritorious provisions of the 2020 AEZ Rule (*i.e.,* clarification of when suspended applications can resume and the immediate family exemption). In addition, the Agency continues to assess the best approaches for improving understanding, compliance, and enforcement the AEZ requirements. The Agency will continue to collect additional information for future consideration on the AEZ requirements.

III. Request for Comment

In addition to the request for comments that are specific to the individual issues discussed in Unit II., EPA also requests comments generally on the proposed changes to the WPS AEZ requirements, its efforts to address potential exposure concerns in connection to the changes made by the 2020 AEZ Rule, and the Agency's intention to retain the 2020 AEZ Rule provisions related to the clarification of when suspended applications can resume and the exemption for owners and their immediate family to remain inside homes or other enclosed buildings or structures that may fall within an AEZ. EPA is also interested in whether the proposed changes may have unanticipated consequences, and whether there are any recommendations or considerations on improving the understanding, compliance, and enforceability of the AEZ provisions. To ensure that EPA can give your comments the fullest consideration, please provide the rationale and data or information that support your position.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Pesticides; Agricultural Worker Protection Standard Revisions; Revision of the Application Exclusion Zone Requirements; Final Rule. **Federal Register**. 85 FR 68760, October 30, 2020 (FRL–10016–03). Available at *https://www.govinfo.gov/content/pkg/FR-2020-10-30/pdf/2020-23411.pdf.*
2. EPA. Pesticides; Agricultural Worker Protection Standard Revisions; Final Rule. **Federal Register**. 80 FR 67496, November 2, 2015 (FRL–9931–81). Available at *https://www.govinfo.gov/content/pkg/FR-2015-11-02/pdf/2015-25970.pdf.*
3. EPA. Economic Analysis of the Agricultural Worker Protection Standard Revisions, September 2015 RIN 2070–AJ22. 2015. EPA Docket ID No. EPA–HQ–OPP–2011–0184–2522. Available at *https://www.regulations.gov/document/EPA-HQ-OPP-2011-0184-2522.*
4. EPA. Cost Analysis for Revisions to the Application Exclusion Zone in the Worker Protection Standard. 2020. EPA Docket ID No. EPA–HQ–OPP–2017–0543–0152. Available at *https://www.regulations.gov/document/EPA-HQ-OPP-2017-0543-0152.*
5. *State of New York et al.* v. *United States Environmental Protection Agency,* Case No. 1:20–cv–10642; (United States Southern District of New York, December 28, 2020). Amended Order Re: Complaint for Declaratory and Injunctive Relief.
6. *State of New York et al.* v. *United States Environmental Protection Agency,* Case No. 1:20–cv–10642; (United States Southern District of New York, August 15, 2022). Eighth Stipulation and Consent Order Further Extending Stay and Extending Injunction.
7. The White House, Briefing Room. Fact Sheet: List of Agency Actions for Review. January 20, 2021. Available at *https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/.*
8. EPA. Worker Protection Standard Application Exclusion Zone Requirements: Updated Questions and Answers. February 15, 2018. Available at *https://www.regulations.gov/document/EPA-HQ-OPP-2017-0543-0008.*
9. EPA. WPS Guidance on the Application Exclusion Zone. Q&A Fact Sheet on the Worker Protection Standard (WPS) Application Exclusion Zone (AEZ) Requirements. April 14, 2016. Available at *https://www.regulations.gov/document/EPA-HQ-OPP-2017-0543-0007.*
10. Felsot *et al.* Agrochemical Spray Drift; Assessment and Mitigation—A Review, 46 J. Envtl. Sci. Health Part B 1. 2010.
11. Kasner *et al.,* Spray Drift from a Conventional Axial Fan Airblast Sprayer in a Modern Orchard Work Environment, 62 Annals of Work Exposures and Health 1134. 2018.
12. W.A. Taylor *et al., An Attempt to Relate Drop Size to Drift Risk,* Proceedings of the International Conference on Pesticide Application for Drift Management, 210–223. 2004.
13. Nuyttens *et al., Effect of Nozzle Type, Size and Pressure on Spray Droplet Characteristics,* 97 Biosystems Engineering 333. 2007.

14. EPA. Pesticides; Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements; Proposed Rule. **Federal Register**. 84 FR 58666, November 1, 2019 (FRL–9995–47).
15. American National Standards Institute (ANSI)/American Society of Agricultural and Engineers (ASAE). *Spray Nozzle Classification by Droplet Spectra.* ANSI/ASAE S572. August 1999.
16. American National Standards Institute (ANSI)/American Society of Agricultural and Biological Engineers (ASABE). *Spray Nozzle Classification by Droplet Spectra.* ANSI/ASABE S572.1. March 2009.
17. American National Standards Institute (ANSI)/American Society of Agricultural and Biological Engineers (ASABE). *Spray Nozzle Classification by Droplet Spectra.* ANSI/ASABE S572.2. July 2018.
18. American National Standards Institute (ANSI)/American Society of Agricultural and Biological Engineers (ASABE). *Spray Nozzle Classification by Droplet Spectra.* ANSI/ASABE S572.3. February 2020.
19. EPA. Notification of Submission to the Secretary of Agriculture; Pesticides; Agricultural Worker Protection Standard; Reconsideration of the Application Exclusion Zone Amendments; Draft Proposed Rule; Notification of submission to the Secretary of Agriculture. **Federal Register**. 87 FR 74072, December 2, 2022 (FRL–8528–02–OCSPP).

V. FIFRA Review Requirements

In accordance with FIFRA section 25(a), EPA submitted a draft of this proposed rule to the United States Department of Agriculture (USDA) (Ref. 19) and the FIFRA Scientific Advisory Panel (SAP) for review. A draft of the rule was also submitted to the appropriate Congressional Committees.

The FIFRA SAP waived its scientific review of this proposed rule on November 27, 2022. The SAP indicated that the draft proposed rule does not contain scientific issues that warranted review by the Panel.

USDA completed its review on December 28, 2022. USDA expressed its support for the action and provided no comments that warranted a response from EPA.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be 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 OMB for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new or modify information collection requirements that would require additional review or approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations under OMB control number 2070–0190 and identified by EPA Information Collection Request No. 2491.06. This proposal does not impose an information collection burden because the AEZ requirements are not associated with any of the existing burdens in the approved information collection request.

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, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are agricultural and handler employers, and commercial pesticide handler employers. The Agency has determined that while reinstating several of the 2015 AEZ requirements could require agricultural employers to direct workers to move away from the edge of treatment areas as the application equipment passes, this would be a very temporary disruption in any worker activity and, as summarized in Unit I.E. and otherwise discussed in Units II.B.2., II.C.2., and II.D.2., would not lead to any quantifiable impacts on agricultural establishments, including small agricultural operations. On the part of the handlers, the requirement to cease an application if someone is in the AEZ clarifies the applicator or handler's responsibility and is unlikely to result in measurable costs.

As explained in Unit II.A.4., the 2020 AEZ Rule never went into effect due to a series of court orders staying the effective date of the 2020 AEZ final rule. While the discussion compares the effects of the currently proposed changes to the 2020 AEZ final rule, the AEZ requirements have always extended beyond the boundary of an agricultural establishment and within easements since it originally went into effect in 2016. Therefore, given that the 2015 rule has remained in effect since its establishment, there are no new impacts expected with this proposed rule.

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. The action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and tribal governments, or on the distribution of power and responsibilities between the Federal Government and tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866 (see Unit V.A.), and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) 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.

The WPS is intended to apply to myriad agricultural pesticides and the Agency has not developed a health or risk assessment to evaluate impact of the proposed amendments of the AEZ provisions for each pesticide subject to the WPS. Beyond the requirements of Executive Order 13045, EPA's *2021 Policy on Children's Health,* dated October 5, 2021 (*https://www.epa.gov/*

system/files/documents/2021-10/2021-policy-on-childrens-health.pdf), requires EPA to consistently and explicitly consider early life exposures and lifelong health in all human health decisions. The Agency finds that it is reasonable to expect that this proposed rule would address existing environmental health or safety risks from agricultural pesticide applications that may have a disproportionate effect on children. Children face the risk of pesticide exposure from work in pesticide-treated areas or near ongoing pesticide application, from the use of pesticides near their homes and schools, and from pesticide residues brought into the home by family members after a day of working with pesticides or being in or near pesticide-treated areas. Children also face the risk of pesticide exposure from drift. The proposed rule is intended to limit these exposures and risks by reinstating AEZ requirements that no longer limit it to the property boundary of an agricultural establishment and expanding the AEZ back to 100 feet for sprayed applications with droplet sizes smaller than medium.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves voluntary standards under NTTAA section 12(d), 15 U.S.C. 272 note. EPA is proposing to adopt the use of ANSI/ASABE S572, ANSI/ASABE S572.1, ANSI/ASABE S572.2, and ANSI/ASABE S572.3 to define ''medium'' droplet sizes. Additional information about these standards, including how to access them, is provided in Unit II.E.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations.

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or indigenous peoples. As noted in past assessments (Ref. 3), affected populations include minority and/or low-income individuals that may have a higher risk of exposure and/or are more vulnerable to the impacts of pesticides due to occupation, economic status, health and obstacles to healthcare access, language barriers, and other sociodemographic characteristics.

EPA believes that this action is likely to reduce existing disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. EPA seeks to limit exposure of agricultural workers, handlers, and communities adjacent to agricultural establishments to pesticides. This action would limit exposures to pesticides, improve public health, and prioritize environmental justice by rescinding certain changes to the AEZ provisions that were reflected in the 2020 AEZ Rule but have not yet taken effect. This action would reinstate, for example, regulatory text requiring agricultural employers to keep workers and other people out of the AEZ during the pesticide application regardless of whether the individuals are outside of establishments' boundaries or within easements. Additionally, these changes will reinstate larger AEZs for those sprays with the highest spray drift potential. As discussed in Unit I.E., reinstating the 2015 WPS requirements for these AEZ provisions better balances social and health-related costs than the 2020 AEZ Rule.

EPA additionally identified and addressed environmental justice concerns by engaging with stakeholders from affected communities extensively in the development of the 2015 WPS rulemaking that originally established the AEZ requirements that the Agency proposes to reinstate. Those efforts were conducted to obtain meaningful involvement of all affected parties. Consistent with those efforts and assessments, EPA believes this rule will better protect the health of agricultural workers and handlers by reinstating the complementary protections of the AEZ that were intended to support the ''Do Not Contact'' requirements within the WPS.

The information supporting this Executive order review is contained in the section discussing the incremental impacts of this action in Unit I.E. and the Economic Analysis from the 2015 WPS (Ref. 3).

List of Subjects in 40 CFR Part 170

Environmental protection, Agricultural worker, Employer, Farms, Forests, Greenhouses, Incorporation by reference, Nurseries, Pesticide handler, Pesticides, Worker protection standard.

Michael S. Regan,

Administrator.

Therefore, for the reasons set forth in the preamble, EPA proposes to amend 40 CFR chapter I as follows:

PART 170—WORKER PROTECTION STANDARD

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 7 U.S.C. 136w.

■ 2. Amend § 170.405 by revising paragraphs (a)(1)(i) and (ii), (a)(2), and (b)(4) and adding paragraph (c) to read as follows:

§ 170.405 Entry restrictions associated with pesticide applications.

(a) * * *

(1) * * *

(i) The application exclusion zone is the area that extends 100 feet horizontally from the point(s) of pesticide discharge from the application equipment in all directions during application when the pesticide is applied by any of the following methods:

(A) Aerially.

(B) Air blast or air-propelled applications.

(C) As a fumigant, smoke, mist, or fog.

(D) As a spray using nozzles or nozzle configurations which produce a droplet size of smaller than medium, in accordance with the meaning given to ''medium'' by the American Society of Agricultural and Biological Engineers in ASABE Standard S572, S572.1, S572.2, or S572.3 (incorporated by reference, see paragraph (c) of this section).

(ii) The application exclusion zone is the area that extends 25 feet horizontally from the point(s) of pesticide discharge from the application equipment in all directions during application when the pesticide is sprayed from a height of greater than 12 inches from the soil surface or planting medium using nozzles or nozzle configurations which produce a droplet size of medium or larger in accordance with the meaning given to ''medium'' by the American Society of Agricultural and Biological Engineers in ASABE Standard S572, S572.1, S572.2, or S572.3 (incorporated by reference, see

paragraph (c) of this section), and not as in paragraph (a)(1)(i) of this section.

* * * * *

(2) During any outdoor production pesticide application, the agricultural employer must not allow or direct any worker or other person to enter or to remain in the treated area or an application exclusion zone that is within the boundaries of the establishment until the application is complete, except for:

(i) Appropriately trained and equipped handlers involved in the application; and

(ii) Owners of the agricultural establishment and their immediate family members who remain inside closed buildings, housing, or shelters under the conditions specified in § 170.601(a)(1)(vi).

* * * * *

(b) * * *

(4) The following table applies to paragraphs (b)(1), (2), and (3) of this section.

TABLE 1 TO PARAGRAPH (b)(4)—ENTRY RESTRICTIONS DURING ENCLOSED SPACE PRODUCTION PESTICIDE APPLICATIONS

A. When a pesticide is applied:	B. Workers and other persons, other than appropriately trained and equipped handlers are prohibited in:	C. Until:	D. After the expiration of time specified in column C, the area subject to the restricted-entry interval is:
(1) As a fumigant	Entire enclosed space plus any adjacent structure or area that cannot be sealed off from the treated area.	The ventilation criteria of paragraph (b)(3) of this section are met.	No post-application entry restrictions required by § 170.407 after criteria in column C are met.
(2) As a: (i) Smoke, or (ii) Mist, or (iii) Fog, or (iv) As a spray using a spray quality (droplet spectrum) of smaller than medium, in accordance with the meaning given to ''medium'' by the American Society of Agricultural and Biological Engineers in ASABE Standard S572, S572.1, S572.2, or S572.3 (incorporated by reference, see paragraph (c) of this section).	Entire enclosed space	The ventilation criteria of paragraph (b)(3) of this section are met.	Entire enclosed space.
(3) Not as in (1) or (2), and for which a respiratory protection device is required for application by the pesticide product labeling.	Entire enclosed space	The ventilation criteria of paragraph (b)(3) of this section are met.	Treated area.
(4) Not as in (1), (2), or (3), and: (i) From a height of greater than 12 inches from the planting medium, or (ii) As a spray using a spray quality (droplet spectrum) of medium or larger in accordance with the meaning given to ''medium'' by the American Society of Agricultural and Biological Engineers in ASABE Standard S572, S572.1, S572.2, or S572.3 (incorporated by reference, see paragraph (c) of this section).	Treated area plus 25 feet in all directions of the treated area, but not outside the enclosed space.	Application is complete	Treated area.
(5) Otherwise	Treated area	Application is complete	Treated area.

(c) *Incorporation by reference.* The material listed in this paragraph (c) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any editions other than those specified in this section, the Environmental Protection Agency (EPA) must publish a document in the **Federal Register** and the materials must be available to the public. All approved material is available for inspection at the EPA and at the National Archives and Records Administration (NARA). Contact EPA at: OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading room and the OPP Docket is (202) 566–1744. For information on the availability of this material at NARA, visit: *www.archives.gov/register//locations.html* or email: *fr.inspection@nara.gov.* The material may be obtained from the following source(s) in this paragraph (c):

(1) American Society of Agricultural and Biological Engineers, 2950 Niles Road, St. Joseph, MI 49085, (269) 429–0300, *https://www.asabe.org.*

(i) ANSI/ASAE S572, Spray Nozzle Classification by Droplet Spectra, Approved August 1999, Reaffirmed February 2004.

(ii) ANSI/ASABE S572.1, Spray Nozzle Classification by Droplet Spectra, Approved March 2009, Reaffirmed December 2017.

(iii) ANSI/ASABE S572.2, Spray Nozzle Classification by Droplet Spectra, Approved July 2018.

(iv) ANSI/ASABE S572.3, Spray Nozzle Classification by Droplet Spectra, Approved February 2020.

(2) [Reserved]

■ 3. Amend § 170.501 by revising paragraph (c)(3)(xi) to read as follows:

§ 170.501 Training requirements for handlers.

* * * * *

(c) * * *

(3) * * *

(xi) Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone and must not resume the application while workers or other persons remain in the application exclusion zone, except for appropriately trained and equipped handlers involved in the application, and the owner(s) of the agricultural establishment and members of their immediate families who remain inside closed buildings, housing, or shelters, provided that the handlers have been expressly instructed by the owner(s) of the agricultural establishment that only immediate family members remain inside those

closed buildings, housing, or shelters and that the application should proceed despite the presence of the owner(s) or their immediate family members inside those closed buildings, housing, or shelters.

* * * * *

■ 4. Amend § 170.505 by revising paragraph (b) to read as follows:

§ 170.505 Requirements during applications to protect handlers, workers, and other persons.

* * * * *

(b) *Suspending applications.* (1) Any handler performing a pesticide application must immediately suspend the pesticide application if any worker or other person is in an application exclusion zone described in § 170.405(a)(1) or the area specified in column B of table 1 to § 170.405(b)(4), except for:

(i) Appropriately trained and equipped handlers involved in the application; and

(ii) The owner(s) of the agricultural establishment and members of their immediate families who remain inside closed buildings, housing, or shelters, provided that the handlers have been expressly instructed by the owner(s) of the agricultural establishment that only immediate family members remain inside those closed buildings, housing, or shelters and that the application should proceed despite the presence of the owner(s) or their immediate family members inside those closed buildings, housing, or shelters.

(2) A handler must not resume a suspended pesticide application while any workers or other persons remain in an application exclusion zone described in § 170.405(a)(1) or the area specified in column B of table 1 to § 170.405(b)(4), except for:

(i) Appropriately trained and equipped handlers involved in the application; and

(ii) The owner(s) of the agricultural establishment and members of their immediate families who remain inside closed buildings, housing, or shelters, provided that the handlers have been expressly instructed by the owner(s) of the agricultural establishment that only immediate family members remain inside those closed buildings, housing, or shelters and that the application should proceed despite the presence of the owner(s) or their immediate family members inside those closed buildings, housing, or shelters.

* * * * *

■ 5. Amend § 170.601 by revising paragraph (a)(1) to read as follows:

§ 170.601 Exemptions.

(a) * * *

(1) On any agricultural establishment where a majority of the establishment is owned by one or more members of the same immediate family, the owner(s) of the establishment (and, where specified in paragraphs (a)(1)(i) through (xiii) of this section, certain handlers) are not required to provide the protections of the following provisions to themselves or members of their immediate family when they are performing handling activities or tasks related to the production of agricultural plants that would otherwise be covered by this part on their own agricultural establishment.

(i) Section 170.309(c).

(ii) Section 170.309(f) through (j).

(iii) Section 170.311.

(iv) Section 170.401.

(v) Section 170.403.

(vi) Sections 170.405(a)(2) and 170.505(b), but only in regard to owner(s) of the establishment and their immediate family members who remain inside closed buildings, housing, or shelters. This exception also applies to handlers (regardless of whether they are immediate family members) who have been expressly instructed by the owner(s) of the establishment that:

(A) Only the owner(s) or their immediate family members remain inside the closed building, housing, or shelter; and

(B) The application should proceed despite the presence of the owner(s) or their immediate family members remaining inside the closed buildings, housing, or shelters.

(vii) Section 170.409.

(viii) Sections 170.411 and 170.509.

(ix) Section 170.501.

(x) Section 170.503.

(xi) Section 170.505(c) and (d).

(xii) Section 170.507(c) through (e).

(xiii) Section 170.605(a) through (c), and (e) through (j).

* * * * *

[FR Doc. 2023–03619 Filed 3–10–23; 8:45 am]

BILLING CODE 6560–50–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–2, 51–3, and 51–5

RIN 3037–AA14

Supporting Competition in the AbilityOne Program

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), operating as the U.S. AbilityOne Commission (Commission), proposes to amend the Commission's regulations to incorporate specific recommendations from the ''Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity'' (the Panel) review mandated by section 898 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017. The mission of the Panel, in part, was to assess the overall effectiveness and internal controls of the AbilityOne Program related to Department of Defense (DoD) contracts and provide recommendations for changes in business practices. Although the Panel focused on DoD-related procurements, the Commission's proposed revisions will apply to all Procurement List (PL) additions. The proposed revisions will clarify the Commission's authority to consider different pricing methodologies in establishing the Fair Market Price (FMP) for PL additions and changes to the FMP; better define the parameters for conducting fair and equitable competitive allocations amongst multiple qualified Nonprofit Agencies (NPAs); and clarify the responsibilities and procedures associated with authorizing and deauthorizing NPAs.

DATES: The Commission must receive comments on these proposed revisions no later than May 11, 2023.

ADDRESSES: You may submit your comments, identified by ''RIN 3037–AA14,'' by using the following method: internet—Federal eRulemaking Portal. Electronic comments may be submitted through *https://www.regulations.gov.* To locate the proposed rule, use RIN 3037–AA14. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Accessible Format: Individuals with disabilities can obtain this document, as well as the comments or other documents in the public rulemaking record for the proposed regulations, in an alternative accessible format by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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.* You may also access

documents of Commission published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.*

FOR FURTHER INFORMATION CONTACT: Cassandra Assefa, Regulatory and Policy Attorney, Office of General Counsel, U.S. AbilityOne Commission, 355 E Street SW, Suite 325, Washington, DC 20024; telephone: (202) 430–9886; email: *cassefa@abilityone.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.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing *Regulations.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. The AbilityOne Program

The Commission is an independent agency of the Federal Government that consists of a 15-member, Presidentially-appointed Commission, and a career civil service staff. The 15-member Commission consists of four (4) private citizen members and 11 other senior-level government employees from various cabinet-level departments of the Government. The Commission administers the AbilityOne Program (AbilityOne or the Program) authorized by the Javits-Wagner-O'Day Act (JWOD Act) and its implementing regulations.[1]

The JWOD Act directs the Commission to designate Central Nonprofits Agencies (CNAs) to facilitate, by direct allocation, subcontract, or any other means, the distribution of government orders of commodities[2] and services among NPAs employing individuals who are blind or have significant disabilities. The Commission has designated National Industries for the Blind (NIB), for NPAs that employ individuals who are blind, and SourceAmerica, for NPAs that employ individuals with other significant disabilities, as the national nonprofit organizations that perform the CNA roles and responsibilities.[3] Each CNA has a Cooperative Agreement to govern its relationship with the Commission and to establish measurable performance metrics for each CNA.[4]

The JWOD Act authorizes the Commission to determine which commodities or services are suitable for sole-source procurement by the Federal Government and placed on the PL. 41 U.S.C. 8503. Once an item is placed on the PL, only the NPA sources authorized by the Commission may supply the commodity or service to Federal agencies. 41 CFR 51–1.2(a). The significance of being a mandatory source for items on the PL is two-fold. First, Federal agencies do not have to follow normal competitive procedures when acquiring items on the PL. Instead, Federal agencies are required to procure the listed item from the qualified NPAs (and only those NPAs) identified on the PL. Second, a PL addition provides a steady stream of income for NPAs and a catalyst for job creation for individuals who are blind or have other significant disabilities. Currently, the PL generates approximately $4 billion in revenue for about 450 NPAs in the AbilityOne Program, creating or sustaining approximately 40,000 jobs for individuals who are blind or have other significant disabilities.

B. The 898 Panel

Section 898 of the Fiscal Year 2017 NDAA[5] directed the Secretary of Defense to establish a panel of senior level representatives from DoD agencies, the Commission, and other Federal agencies and organizations to address the effectiveness and internal controls of the Program related to DoD contracts.[6] The primary mission of the Panel was to identify vulnerabilities and opportunities in DoD contracting with the AbilityOne Program and, at a minimum, to recommend improvements in the oversight, accountability, and integrity of the Program. The Panel established seven subcommittees to fulfill its duties. The Panel was required to provide annual reports to Congress on its activities, starting no later than September 30, 2017, and annually thereafter for the next three years and a final report in 2022.[7] Of specific relevance to the proposed rule, the Panel formed an Acquisition and Procurement and U.S. AbilityOne Contracting Oversight subcommittee (also known as Subcommittee Six) to address procurement-specific concerns.

Before the Panel's sunset in December 2021, Subcommittee Six made eleven recommendations. The Commission implemented several of those recommendations. The following four recommended actions are now being proposed through this notice of proposed rulemaking (NPRM):

- Require CNAs to consider price, technical capability, and past performance when making an NPA allocation decision.
- Establish policy and business rules for competition and re-competition of the PL within the AbilityOne Program.
- Revise 41 CFR part 51 to include information regarding deauthorization of NPAs as the authorized source on the PL.
- Protect, to the maximum extent practicable, the jobs of incumbent employees who are blind or have other significant disabilities if an NPA is deauthorized and its work is reallocated within the AbilityOne.

The Commission found significant utility in the Panel's work and agreed with many of its recommendations. For instance, even though the Panel's efforts were focused on the interplay between AbilityOne and DoD procurements, the Commission recognized that many of the Panel's findings applied to the entire Program. Specifically, the Panel raised numerous concerns about the lack of transparency and perceptions of an unequal playing field in the NPA authorization process. The Commission acknowledges that the process to recommend and authorize an NPA may appear opaque from an outsider perspective. These proposed regulatory changes make affirmative steps toward clarifying the process and modifying the NPA selection process with the goal of best meeting the needs of the Federal customer.

In June 2022, the Commission issued its Strategic Plan for fiscal year (FY) 2022–2026. The document incorporated much of the work of the Panel and serves as a policy road map for the Program over the next five years. The plan is anchored by four Strategic Objectives:

- Expand competitive integrated employment (CIE) for individuals who are blind or have other significant disabilities.

[1] 41 U.S.C. chapter 85, Committee For Purchase From People Who Are Blind or Severely Disabled and Code of Federal Regulations, title 41, chapter 51, Committee for Purchase From People Who Are Blind or Severely Disabled.

[2] The Commission recognizes that the Federal Acquisition Regulation (FAR) uses the term ''products.'' However, ''commodity(ies)'' is more consistent with the Commission's existing regulations (41 CFR chapter 51).

[3] 41 CFR 51–3.1.

[4] Agreements can be found at *https://www.abilityone.gov/laws,_regulations_and_policy/foia_reading_room.html.*

[5] Pub. L. 114–328, sec. 898 (2016).

[6] The Panel consisted of representatives of the Office of the Secretary of Defense and the DoD Inspector General, the U.S. AbilityOne Commission, and the U.S. AbilityOne Commission Inspector General, as statutory members. The Panel's membership also consisted of senior leaders and representatives from the military service branches, Department of Justice, Department of Veterans Affairs, Department of Labor, Department of Education, the General Services Administration, and the Defense Acquisition University.

[7] Each report can be found at *https://www.acq.osd.mil/asda/dpc/cp/policy/abilityone.html.*

• Identify, publicize, and support the increase of good jobs and optimal jobs in the AbilityOne Program.

• Ensure effective governance across the AbilityOne Program.

• Partner with Federal agencies and AbilityOne stakeholders to increase and improve CIE opportunities for individuals who are blind or have other significant disabilities.

These four objectives represent a deliberate shift to align the Program with contemporary disability policy and modern business practices.[8] Objective III, Outcome Goal 2, describes how the Commission will ''support the mission by providing best value through contract performance.'' This goal is consistent with the Panel's work and the purpose of the proposed rules described herein.

II. Need for Rulemaking

Every item procured on behalf of the Federal Government originates as a requirement for a Federal agency. Under the Program's current framework, CNAs are responsible for identifying which requirements are ''suitable'' for the Program and making a recommendation to the Commission for addition to the PL. A suitability recommendation also includes identifying qualified NPAs capable of serving as authorized sources.

In most cases, the CNAs work with Federal agencies to determine which requirements are best suited for a PL addition given the agency's needs, available funding, and time frame. This initial identification can be made by the Federal agency or by the CNA in search of potential opportunities. After the parties agree that a requirement may be suitable for a PL addition, the CNA issues an opportunity notice (ON) to its network of NPAs. The ON acts as a solicitation to the NPA community, which describes, at a minimum, the requirements, necessary NPA qualifications, the period of performance, and any other special consideration established by the CNA or Commission. If multiple NPAs respond to the ON, the responsible CNA will engage in a NPA selection process to determine which NPA can offer the best overall solution to the Federal agency. NPA selection normally consists of an evaluation of each NPA's technical capabilities and past performance information. Price, however, is never a consideration at this pre-selection stage. After the CNA identifies the most qualified NPA, it provides a recommendation to the Commission along with all other information pertaining to the overall suitability of the proposed PL addition and enough supporting data to substantiate an initial FMP. The FMP data is generally the byproduct of bilateral negotiations between the NPA and the Federal agency. The Commission staff will often scrutinize the proposed FMP to determine if it is, in fact, a fair price. The FMP is not the lowest or the highest price that could be paid. Instead, the FMP is a reasonable price based on the needs of the Federal agency, market conditions, and the quality of the goods and/or services being provided by the NPA. If the Commission staff concurs with the FMP, the CNA's recommendation and proposed FMP is forwarded to the Commissioners for a vote. If a majority of the Commissioners concur with the recommendation, the suitability determination is affirmed and the initial FMP is established. The Commission then adds the requirement to the PL and authorizes a single NPA to serve as the mandatory source to receive orders from Federal customers. Once the requirement is on the PL, it will normally remain there until no Federal agency needs the requirement or there is no NPA in the Program capable of providing the commodity or service. If, however, there is an ongoing need, Federal agencies must procure the commodity or service from the NPA authorized by the Commission.

The proposed regulatory changes leave the existing NPA recommendation and allocation framework in place, with three modest modifications. First, § 51–2.7 (fair market price) proposes to clarify the Commission's authority to use price competition as a means of determining, establishing, and changing the initial FMP. Second, § 51–3.4 (distribution of orders) proposes to provide a mechanism for Federal agencies to increase their involvement in the allocation process by requesting a competitive distribution. A request for a competitive distribution means the responsible CNA recommends, and the Commission approves, at least two qualified NPAs to function as authorized sources. After which, an allocation would then be issued on a competitive basis to the NPA that can provide the ''best overall solution'' to the Federal customer. Lastly, proposed § 51–5.2 (mandatory source requirement) clarifies the Commission's authority to authorize and deauthorize NPAs and adds additional protections to employees when work is transferred between NPAs.[9] These changes are intended to modernize the Program and to better align it with the needs of the Federal customer.

III. Specific Proposed Changes to 41 CFR Parts 51–2, 51–3, and 51–5

A. *Section 51–2.7 (Fair market price).* Section 8503(b) of the JWOD Act states that the Commission ''shall determine the fair market price of commodities and services contained on the [PL] that are offered for sale to the Federal Government by a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely disabled.'' As noted above, the current process only calls for considering an NPA's Program-specific qualifications, technical rating, and past performance. Price, however, is only considered and negotiated after an NPA has been selected. 41 CFR 51–2.7. This is prudent in many situations, especially when there is sufficient market data to validate the sufficiency of those negotiations. However, in some instances, the complexity, varied market conditions, and/or uniqueness of the requirement make bilateral negotiations less feasible for establishing the FMP. In those instances, using competitive market forces as a factor for establishing the FMP would be more beneficial to the Commission in meeting its statutory obligation.

To test the efficiency of considering price on a competitive basis, the Commission pilot-tested two procurements that included price in the NPA recommendation process. The pilot tests demonstrated that including price as a factor, coupled with a ''customer-focused'' selection ethos, can provide promising results for the Federal customer and the AbilityOne Program.[10] It also provided the Commission a reliable baseline on which the Commission could rely in establishing the FMP. The inclusion of price as an evaluation factor was not used as an attempt by the Commission to prioritize price over all other factors. Instead, price was subordinate to performance history to emphasize the Federal agency's desire to identify NPAs with a strong performance record, and a commitment to customer satisfaction. Again, a fair market price is not the lowest price or the highest price the market will bear, but rather the fairest price supported by adequate research and market considerations.

Current Regulation: The Commission's current regulations

[8] AbilityOne Strategic Plan for FY 2022–2026. *https://www.abilityone.gov/commission/strategicplan.html.*

[9] The Commission acknowledges the Panel's additional recommendations; however, this proposed rule is intended only to address the Panel's recommendation related to competition and is not meant to address all recommendations.

[10] Information on file at the AbilityOne Commission (available upon request).

permit bilateral price negotiations between the NPA and contracting agency rather than leveraging competitive market forces. The regulation states, in part, that ''other methodologies'' (like price competition) can be used, ''if agreed to by the negotiating parties.'' The regulation also states, in relevant part, that ''[p]rices are revised in accordance with changing market conditions which include negotiations between contracting activities and producing nonprofit agencies, assisted by central nonprofit agencies, or the use of economic indices, changes in nonprofit agency costs, or other methodologies permitted under these procedures'' (§ 51.2–7(b)) and that ''recommendations for initial fair market prices, or changes thereto, shall be submitted jointly by the contracting activities and nonprofit agencies concerned to the appropriate central nonprofit agency'' (§ 51–2.7(c)).

Rationale for Proposed Change: The Commission is concerned that the provision ''if agreed to by the negotiating parties'' in § 51.2–7(a) could be misinterpreted to mean that the Commission cannot consider other methodologies (such as price competition) in establishing the initial FMP unless the NPA and contracting activity also agree. Such a reading is not consistent with the Commission's statutory authority to establish the FMP or the general thrust of the regulation.[11] In fact, a recent decision at the Court of Federal Claims (COFC) held the following:

> This is not to say that introducing a price component can never be utilized in AbilityOne procurements, nor that use of competitive pricing may not be advantageous to the United States. On the contrary, the Court only holds that the agency may not depart from its enabling statutes and its own regulations by adopting policies that conflict with the statutory and regulatory scheme.[12]

The COFC found that the price component at issue in this case conflicted with the ''collaborative pricing process'' contemplated under 41 CFR 51–2.7 (negotiations with the nonprofit contractor, the contracting activity, and the central nonprofit agency). The COFC added that ''other methodologies'' (aside from negotiations) are permissible, but only if the parties agree to a deviation from this process. § 51–2.7(a). The JWOD Act, however, unambiguously authorizes the Commission to establish the FMP and to revise it ''in accordance with changing market conditions.''[13] As such, the Commission believes it has the discretion to use the most appropriate pricing methodology when it initially establishes or changes the FMP and is not limited solely to an agreement of the negotiating parties as interpreted by the Court. The proposed changes to § 51–2.7 are intended to harmonize the statute and regulation to eliminate any ambiguity surrounding the Commission's authority to establish the FMP, by making it clear that an agreement between the parties is not required for the Commission to utilize other pricing methodologies (including price competition) to establish or change the FMP.

Proposed Regulation: The proposed changes to § 51–2.7 eliminate the ambiguity surrounding the Commission's authority to establish the FMP. The proposed regulation amends paragraph (a) by removing ''if agreed to by the negotiating parties'' and replacing the existing text with ''the price can be based on market research, comparing the previous price paid, price competition, or any other methodology specified in Committee policies and procedures.'' This change makes clear that agreement by the parties is not required in establishing the FMP and adds examples of other bases upon which FMP can be based. The proposed regulation also amends paragraph (b) to state that the FMP may be revised in accordance with methodologies established by the Committee, which include the addition of price competition. Lastly, the proposed rule removes the language currently at § 51–2.7(c) requiring the initial FMP, or changes thereto, to be submitted jointly by contracting activities and NPAs to the CNA (§ 51–2.7(c)). The contracting activities and NPAs may still submit prices jointly as a matter of Commission policy, but such a requirement would only be applicable if bilateral negotiations is the method the Commission chooses to use to determine the FMP.

B. *Section 51–3.4 (Distribution of orders)*—CNAs have explicit statutory authority ''to facilitate the distribution, by direct allocation, subcontract, or any other means, of orders of the Federal Government for commodities and services on the procurement list among qualified nonprofit agencies for the blind or qualified nonprofit agencies for other severely disabled.'' 41 U.S.C. 8503(c). A distribution can only occur, however, after the Commission has authorized at least one NPA to serve as a mandatory source.

Current Regulation: The current regulation states that the CNA ''shall distribute orders from the government only to nonprofit agencies which the Committee has approved,'' and, ''[w]hen the Committee has approved two or more nonprofit agencies to furnish a specific commodity or service,'' the CNA shall distribute the order ''in a fair and equitable manner.''

Rationale for Proposed Change: Under the current structure, the CNAs typically recommend a single NPA to provide a commodity or service to the Federal customer. The CNAs consider numerous factors before recommending an NPA to the Commission, but the priorities of the Federal customer aren't always effectively articulated throughout the recommendation process.[14] Nevertheless, once that recommendation is made and the Commission authorizes the recommended NPA to serve as a mandatory source, the CNA must distribute orders to that NPA and *only* that NPA as long as the commodity or service remains on the PL. Since NPAs in the Program vary in sophistication and technical expertise, where two or more NPAs have been approved to provide a service, the competitive distribution option will be limited to only services contracts where the total contract value exceeds $10 million[15] or in instances where bilateral negotiations have failed. The proposed language emphasizes the priorities of the Federal customer for specific allocations and creates a framework for the Federal agency to utilize the competitive distribution option for any service contract with a total contract value exceeding $10 million. This rule proposes to allow the Commission to opt for a competitive allocation for services contracts with a total contract value at or below $10 million due to an impasse in bilateral negotiations regarding price. It is important to emphasize that the competitive distribution option may only be utilized for services contracts, not contracts for commodities. These changes are intended to provide all Federal agencies access to competitive distributions while also allowing the Commission to have the flexibility to approve requests and tailor execution consistent with the Commission's available resources,

[11] *See, e.g., Melwood Horticultural Training Center, Inc.* v. *United States,* 153 Fed. Cl. 723, 737 (2021).

[12] *Melwood Horticultural Training Center, Inc.* v. *United States,* 153 Fed. Cl. 723, 737 (2021).

[13] 41 U.S.C. 8503(b). It should be noted that a ''collaborative pricing process'' is not contemplated under the statute. The authority to establish the FMP rests solely with the Commission.

[14] *Supra* note 5.

[15] Total contract value consists of the base period plus all option periods.

personnel, and the needs of the Program.

Proposed Regulation: The process for recommending, authorizing, and distributing orders to NPAs will continue to be done in a ''fair and equitable manner,'' but each allocation will be made to the NPA that provides the ''best overall solution'' for the Federal customer. This rule proposes to amend § 51–3.4 to impose new requirements as to how a CNA must distribute orders for certain services contracts among two or more approved NPAs. First, this rule proposes to remove the language requiring CNAs to distribute orders to NPAs in a ''fair and equitable manner'' and replace the existing text with ''in a manner that provides the best overall solution for the Federal customer.'' This rule also proposes to add new paragraphs (b), (c), (d), and (e), which impose additional requirements for new and existing PL additions. For service requirements that are expected to exceed $10 million in total contract value, the Federal customer may request, subject to the Commission's approval, that the procurement be distributed on a competitive basis among all authorized NPAs (proposed § 51–3.4(b)). For service requirements equal to or less than $10 million in total contract value, the Commission may direct a competitive distribution for an existing PL service requirement in instances where good faith sole source negotiations have failed to produce an agreeable price (proposed § 51–3.4(c)). Finally, this rule also proposes to provide guidance for NPA selection and the Federal customer's obligations in requesting a competitive distribution (§ 51–3.4(d)) and establishes a framework for resolving a dispute arising out of a competitive distribution decision (§ 51–3.4(e)).

C. *Section 51–5.2 (Mandatory source requirement)*—The Commission is responsible for placing and removing items from the PL and authorizing and deauthorizing qualified NPAs to serve as mandatory sources. 41 CFR 51–2.2(b).

Current Regulation: The current regulation states, in relevant part, that ''[n]onprofit agencies designated by the Committee are mandatory sources of supply for all entities of the Government for commodities and services included on the Procurement List'' (§ 51–5.2(a)), ''[p]urchases of commodities on the Procurement List by entities of the Government shall be made from sources authorized by the Committee'' (§ 51–5.2(b)), ''[c]ontracting activities shall require other persons providing commodities which are on the Procurement List to entities of the Government by contract to order these commodities from the sources authorized by the Committee'' (§ 51–5.2(c)), and ''[c]ontracting activities procuring services which have included within them services on the Procurement List shall require their contractors for the larger service requirement to procure the included Procurement List services from nonprofit agencies designated by the Committee'' (§ 51–5.2(e)).

Rationale for Proposed Regulation: Before an item is added to the PL, the Commission must find that the commodity or service is ''suitable'' for addition. 41 CFR 51–2.4. The Commission's regulations require that the suitability of a commodity or service be evaluated on four criteria: (1) employment potential, (2) the qualifications of the proposed NPA(s), (3) the capability of the proposed NPA(s), and (4) the level of impact on the current contractor. 41 CFR 51–2.4(a). Under the Commission's regulations, the suitability determination ''approves'' a commodity or service for PL addition and ''authorizes'' at least one NPA to serve as a mandatory source. The current regulation at § 51–5.2 does not explicitly assert the Commission's authority to authorize or deauthorize an NPA.[16] It is also silent on an NPA's responsibilities for the incumbent workforce when work is transferred from one NPA to another. This rule proposes changes to § 51–5.2 to clarify the Commission's authority to authorize and deauthorize NPAs and add additional protections for incumbent employees when work is transferred between NPAs.

Proposed Regulation: The proposed changes clarify the Commission's authority to authorize and deauthorize NPAs to serve as mandatory sources and to transfer work within the Program. The Commission proposes to amend the text of paragraph (a) to state that the Committee may authorize one or more NPAs to provide a requirement on the PL; that NPAs authorized as mandatory sources remain on the PL until the NPA has been deauthorized by the Committee; and that CNAs may allocate to one or more NPAs a commodity or service on the PL. This rule also proposes to amend paragraph (b) to state that the Committee will authorize the most capable NPA as a mandatory source and paragraph (c) to clarify that contracting activities shall require that their contract with others, such as prime vendors, providing commodities already on the PL to the Federal agency, must order these commodities from Committee authorized sources. We also propose to change the language in paragraph (e) to state that contracting activities procuring services must procure included PL commodities in addition to services from the NPA ''authorized'' in lieu of ''designated'' by the Committee. Lastly, the proposed changes also include a new paragraph that includes an affirmative requirement to protect and retain employees who are blind or have other significant disabilities when a project is transferred to another NPA within the Program (proposed § 51–5.2(f)).

VI. Regulatory Procedures

A. Applicability of E.O. 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this will be a significant regulatory action and, therefore, is subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

B. Expected Impact of Proposed Rule

While the proposed changes are applicable to all NPAs, the Commission estimates that they would have the most impact on approximately 27 percent or 122 of the 450 NPAs currently qualified to participate in the Program.[17] This group of NPAs performs approximately 346 services contracts, which total an annual revenue of roughly $3.07 billion.[18] Half of that amount ($1.63 billion), is concentrated amongst 23 qualified NPAs.[19] In addition, these rule

[16] 41 CFR 51–2.2(b) provides that the Committee has the power and responsibility to authorize and deauthorize central nonprofit agencies and nonprofit agencies to accept orders from contracting activities for the furnishing of specific commodities and services on the PL.

[17] This number is based on the total number of NPAs within the Program that have at least one contract that exceeds $10 million in total contract value. These estimates do not account for impasse occurrences which historically are rare with an average of two each year based on data from the last five years. Information on file at the AbilityOne Commission (available upon request).

[18] Information on file at the AbilityOne Commission (available upon request).

[19] *Id.*

changes would apply equally across all Federal agencies, but the Department of Defense (DoD) would be impacted the most, accounting for approximately 79 percent of the $3.07 billion ($2.41 billion) in AbilityOne service contracts annually.

Lastly, service contracts are typically renewed once every five years. This means that, on average, up to one-fifth of all applicable AbilityOne service contracts (69 per year) would be subject to the proposed changes in any given year. In terms of dollar amount, this would subject approximately $614 million in contract dollars to a possible competitive distribution on an annualized basis.[20] The exact amount for any given year would be based on the number of requests received and approved by the Commission.

Benefits of Proposed Rule [21]

Both CNAs already use a competitive approach when recommending NPAs to the Commission to serve as mandatory sources for a vast majority of new PL additions.[22] The largest criticism to current practice is the perceived lack of transparency in the NPA selection process, a perception of NPA complacency after receiving an authorization, and the inability to consider price on a competitive basis when selecting an NPA.[23] The proposed regulatory changes will directly address each concern by providing greater customer involvement in NPA selection, creating a mechanism to incentivize better performance, and encouraging more competitive pricing.

i. *Increased Transparency*—For PL additions of more than $10 million in total contract value, inclusive of the base period and all options periods, the proposed changes provide Federal agencies the option to request a competitive allocation. A significant component of that request requires the Federal agency to state ''whether it will provide resources to support the process.'' The Federal agency is not required to provide resources, but the Commission has found great utility in involving the Federal customer in assisting with evaluating NPA technical capabilities, past performance, and pricing. In 2019 and 2021, the Commission conducted competitive NPA selection pilot tests, leveraging the resources of the Federal agency's responsible contracting activity.[24] In both instances, the Federal agency provided an invaluable mix of engagement and expertise throughout the entire process. However, the ultimate decision for selecting the servicing NPA always fell within the purview of the Commission's authority and will remain within the purview of the Commission under the proposed rule.

ii. *Incentivize Better Performance*—The AbilityOne Program was created to allow Federal agencies to issue orders on a sole-source basis to qualified NPAs. The competitive procedures proposed herein will not change that. In fact, service requirements below the threshold will not be significantly impacted by the proposed changes and commodities are not subject to the changes for competitive distributions. However, NPAs involved in servicing higher dollar requirements will have to be more responsive to market forces and innovative practices to maintain its place as a mandatory source. The Commission believes that the prospects of a competitive allocation every five to ten years is an appropriate motivator.

The proposed rules also provide a CNA a more effective means for replacing a poor performing NPA, without resorting to granting a Federal agency a purchase exception to procure the requirement *outside* the Program. Instead, the proposed changes will encourage CNAs to identify as many capable NPAs as possible when a PL addition is initially established. If, in the unlikely event, the originally selected NPA falls well short of expectations, the responsible CNA can make a re-allocation amongst the other authorized NPAs.

iii. *More Competitive Pricing*—The AbilityOne Program has been a trusted source to Federal agencies since 1938. To remain a trusted source, qualified NPAs must deliver high-quality commodities and services in a timely manner at a competitive price. The two test pilots completed in 2019 and 2021 provide a proof of concept to the potential cost savings that might be generated through competition. The first competitive pilot test was conducted for the Ft. Bliss Facilities Support and Operations Services (FSOS) contract, initially valued at $66.7 million per year and resulted in a contract award of $59.5 million per year, an annual savings of $7.2 million ($39.6 million over the entire performance period) or a 12% reduction.[25] The second pilot test for the Ft. Meade Maintenance and Repair Services contract was valued at $19.6 million per year. The new price would have been $16.8 million per year, an annual savings of $2.8 million ($14 million over the entire performance period) or a 17% reduction.[26] These results suggest that price competition at the pre-selection stage, when compared to bilateral negotiations after NPA selection, can have some very tangible benefits to the Federal Government through cost savings.

Cost of Proposed Rule [27]

The Commission believes that the potential costs from implementation of the proposed changes are greatly outweighed by the benefits to the NPA community, the CNAs, and the Federal Government.

i. *Cost to NPAs*—The Commission believes that the only additional cost that might be attributed to these proposed rules for *new* PL additions is the cost an NPA would incur if it is required to include pricing information in its response to an ON. For *existing* requirements, the only meaningful cost might be proposal preparation cost and possible phase-out cost to the incumbent NPAs if they do not receive a re-allocation after a competitive distribution and must transfer the incumbent workforce to the new NPA.

a. *New PL Additions Without an Incumbent NPA:* When a CNA issues an ON, NPAs are already required to prepare and submit a competitive response. Responses will provide, at a minimum, information regarding the NPA's qualifications, technical capabilities, and past performance information. It does not, however, provide pricing until after the field has been narrowed down to a single NPA. At that stage, the successful NPA will enter bilateral price negotiations with the Federal customer. Under the proposed rule § 51–2.7(a), it is permissible to include price as a factor as part of the ON. If price is used as a factor, responding NPAs might incur some cost if required to include pricing data in the initial response to the ON.

[20] Based on an extrapolation of available data and estimated contract expiration dates, the number of possible requests would be 28, 69, 99, 79, and 69 for FY 2021, FY 2022, FY 2023, FY 2024, and FY 2025, respectively. The Commission believes, for purposes of this proposed rule, using the average number is appropriate.

[21] The changes discussed in this rulemaking are separate and distinguishable, but collectively all three rules are designed to enhance competition within the Program. The benefits in this section address the impact on all three proposed changes collectively.

[22] *Supra* note 12.

[23] Available at, *https://abilityone.oversight.gov/reports/2022/898-panel-issues-fourth-and-final-annual-report-congress,* pp 26–27.

[24] Information on file at the AbilityOne Commission (available upon request).

[25] *Id.*

[26] *Id.*

[27] The changes discussed in this rule making are separate and distinguishable, but collectively all three rules are designed to enhance competition within the Program. The costs in this section address the impact on all three proposed changes collectively.

However, since each responding NPA is already on notice that pricing information will be needed to ultimately secure a recommendation, this change would only alter when the NPA must submit it and how it is used.

b. *Existing PL Services with an Incumbent NPA:* For existing service requirements, the only meaningful cost might be proposal preparation cost and possible phase-out expenses to the incumbent NPAs for the approximately 346 service requirements potentially impacted by a competitive distribution. Under current practice, an incumbent NPA will generally only be displaced by another NPA if it cannot meet the Government's requirements in a satisfactory manner. Otherwise, an NPA will continue to serve as a mandatory source for the life of an existing requirement. Under the proposed rule changes, a Federal agency may request a *re-allocation* on a competitive basis for a service requirement exceeding $10 million in total contract value, inclusive of the base period and all option periods, or the Commission may direct a competitive re-allocation in instances where bilateral negotiations have failed. If the Commission approves the Federal agency's request for a competitive re-allocation, or if the Commission directs competitive re-allocation after an impasse in negotiations, the incumbent may incur cost in preparing a competitive proposal. If it is displaced, it may incur transition costs, but a vast majority of those costs may be reimbursable under the existing Federal contract. A displaced incumbent NPA would also lose the revenue from the lost allocation. However, from a programmatic perspective, the revenue would remain within the Program because the work would continue to be performed by another qualified NPA. Secondly, proposed rule § 51–5.2(f) requires the losing and gaining NPAs to work together to ensure that any adverse impacts on the incumbent workforce are mitigated to the maximum extent practicable.

ii. *Cost to CNAs*—The most significant cost that the CNAs would incur are the costs for the approximately 346 PL services that might be selected for a price-inclusive competitive allocation. Of that number, all but ten would fall to SourceAmerica, which has reported to the Commission that it would need 14 full-time equivalents (FTEs) in additional staff or $1.5 million annually to handle the potential increase in workload. However, such costs assume that the Commission would approve every eligible PL service for a competitive distribution. As noted above, the discretionary nature of each request and the Commission's discretion under the proposed rule to determine whether a competitive distribution is appropriate provides the Commission the flexibility to control the number of approved requests based on resource availability.

While competitive distributions may be more resource intensive for CNAs than the status quo, the potential additional costs to CNAs may be offset by increased participation by the Federal customer. For instance, during the competitive pilot for Fort Bliss, the Federal customer provided no less than 7 FTEs of general staff and evaluation support (*i.e.,* technical evaluation, past performance, and pricing). In any event, the Commission recognizes that competitive distributions might be more resource intensive than the status quo, but many of those costs will be offset by increased participation from the Federal customer and improved customer satisfaction. Additionally, a price impasse because of failed bilateral price negotiations could take multiple bridge contracts and hundreds of additional man-hours to establish the price for a follow-on contract. In those instances, a competitive allocation would reduce the administrative burden for both the CNA and Federal customers by allowing market conditions to be a more determinative factor.

iii. *Cost to Federal Customers*—The Commission anticipates that the cost to the Federal customer will vary depending on how much support it provides to the Commission and the responsible CNA in carrying out a competitive distribution. In most instances, the Federal customer will be expected to provide personnel to assist with the technical evaluation, past performance evaluation, and price analysis. Additionally, each time an existing PL service requirement is re-allocated, there may be some disruption to contract performance and administrative cost associated with replacing an incumbent contractor. However, this cost would only be incurred if the Federal customer determines that a re-allocation is more advantageous to the Federal Government than maintaining the status quo.[28]

iv. *Cost to the AbilityOne Commission*—According to analysis derived from the two pilot tests, the Commission would need to dedicate additional FTEs consisting of a competition lead, additional attorney advisors, a contract specialist, and several price analysts.[29] Absent additional personnel, the Commission would only be able to support a small number of competitive distributions. The agency would need to budget an additional $800,000–$1.2 million annually to account for the personnel needed to support a competitive allocation for each PL addition in excess of $10 million in total contract value.[30] However, the Commission will largely be able to mitigate additional cost in the following ways:

a. *Limited Scope:* The Section 898 Panel recommended that a competitive process apply to those service requirements with an annual value of $10 million per year. It also recommended that competitive distributions be mandatory.[31] The proposed rule changes allow for competitive distributions on service contracts that are greater than $10 million in total contract value or in instances where bilateral negotiations have failed, and application of a competitive distribution is not mandatory. The discretionary nature of competitive distributions under the proposed rule provides the Commission the flexibility to approve requests and tailor execution consistent with the Commission's available resources, personnel, and the needs of the Program.

b. *Leveraging personnel from the Federal customers:* By placing a vast majority of the resource burden for conducting competitive distributions on the responsible CNAs and the requesting Federal agency, the Commission can focus on providing better oversight and compliance. For CNAs, the resource burden is only slightly more than the status quo, and for the Federal customer all additional costs are dedicated to supporting NPA evaluations (*i.e.,* technical experts, pricing analysis, etc.).

D. *Regulatory Flexibility Act*—The Committee does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601, *et seq.,* because it does not include any new reporting, recordkeeping, or other compliance requirements for small entities. The proposed rule only establishes business rules to improve the AbilityOne

[28] The cost will vary by Federal agency. The Commission will have more information from the After Action Response (AAR) on the Fort Bliss Competitive Pilot test. The results of the pilot will be posted on our website and will also be available by request.

[29] Information on file at the AbilityOne Commission (available upon request).

[30] This estimate is based on hiring an additional 8–12 FTEs at an average cost of $100K per person.

[31] *Supra* note 18.

Program processes. This proposed rule also does not duplicate, overlap, or conflict with any other Federal rules. However, it has not yet been certified as to whether it is subject to the Regulatory Flexibility Act (5 U.S.C. 601).

E. *Unfunded Mandate Reform*—This proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

F. *Paperwork Reduction Act*—This proposed rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

G. *Small Business Regulatory Enforcement Fairness Act of 1996*—This proposed rule would not constitute a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects

41 CFR Part 51–2

Government procurement, Individuals with disabilities, Organization and functions (Government agencies).

41 CFR Parts 51–3 and 51–5

Government procurement, Individuals with disabilities.

For reasons set forth in the preamble, the Commission proposes to amend 41 CFR parts 51–2, 51–3, and 51–5 as follows:

PART 51–2—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

■ 1. The authority citation for part 51–2 is revised to read as follows:

Authority: 41 U.S.C. 46–68c.

■ 2. Amend § 51–2.7 by:

■ a. Revising the second and third sentences and removing the fourth sentence of paragraph (a); and

■ b. Revising paragraphs (b) and (c).

The revisions read as follows:

§ 51–2.7 Fair market price.

(a) * * * The Committee is responsible for determining fair market prices, and changes thereto, for commodities and services on the Procurement List. The initial fair market price may be based on bilateral negotiations between contracting activities and authorized nonprofit agencies, market research, comparing the previous price paid, price competition, or any other methodology specified in Committee policies and procedures.

(b) The initial fair market price may be revised in accordance with the methodologies established by the Committee, which include sole source negotiations between contracting activities and producing nonprofit agencies assisted by central nonprofit agencies, the use of economic indices, price competition, or any other methodology permitted under the Committee's policies and procedures.

(c) After review and analysis, the central nonprofit agency shall submit to the Committee the recommended fair market prices and, where a change to the fair market price is recommended, the methods by which prices shall be changed to the Committee, along with the information required by Committee pricing procedures to support each recommendation. The Committee will review the recommendations, revise the recommended prices where appropriate, and establish a fair market price, or change thereto, for each commodity or service which is the subject of a recommendation.

PART 51–3—CENTRAL NONPROFIT AGENCIES

■ 3. The authority citation for part 51–3 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

■ 4. Revise § 51–3.4 to read as follows:

§ 51–3.4 Distribution of orders.

(a) Central nonprofit agencies shall distribute orders from the Government only to nonprofit agencies which the Committee has authorized to furnish the specific commodity or service. When the Committee has authorized two or more nonprofit agencies to furnish a specific commodity or service, the central nonprofit agency shall distribute orders among those nonprofit agencies in a manner that provides the best overall solution for the Federal customer.

(b) For new and existing Procurement List services that are estimated to exceed $10 million in total contract value, inclusive of the base period and all option periods, the Federal customer may request that the procurement be distributed on a competitive basis among all authorized nonprofit agencies. The Committee will determine whether a competitive distribution is appropriate. The nonprofit agency selected through a competitive distribution is the nonprofit agency that the Committee has determined provides the best overall solution for the Federal customer after considering such factors as technical capability, past performance, and price. Depending on the needs of the Federal customer, factors may be weighted. Price shall not be the only factor in a distribution decision.

(c) The Commission may also direct a competitive distribution in accordance with paragraph (b) of this section for any service already on the Procurement List (regardless of dollar amount) if the sole source negotiations described at § 51–2.7(b) of this chapter fail to produce a price acceptable to both parties for a follow-on procurement.

(d) In addition to the requirements described at part 51–6 of this chapter, the requesting Federal customer shall advise the Committee of the rationale for competition, whether it will provide resources to support the process, the estimated cost, any information pertaining to performance by any independent contractor, and such other information as is requested by the Committee.

(e) Any dispute arising out of a competitive distribution decision described at paragraph (b) of this section shall be submitted to the appropriate central nonprofit agency for resolution. If the affected nonprofit agency disagrees with the central nonprofit agency's distribution decision, it may appeal that decision to the Committee for final resolution. Appeals must be filed with the Committee within five business days of the nonprofit agency's notification of the central nonprofit agency's distribution decision, and only a nonprofit agency that participated in the competitive distribution process described at paragraph (b) of this section may appeal.

PART 51–5—CONTRACTING REQUIREMENTS

■ 5. The authority citation for part 51–5 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

■ 6. Amend § 51–5.2 by revising the section heading and paragraphs (a), (b), (c), and (e) and adding paragraph (f) to read as follows:

§ 51–5.2 Authorization/deauthorization as a mandatory source.

(a) The Committee may authorize one or more nonprofit agencies to provide a commodity or service on the Procurement List. Nonprofit agencies

that have been authorized as mandatory sources for a commodity or service on the Procurement List are the only authorized sources for providing that commodity or service until the nonprofit agency has been deauthorized by the Committee. To meet the needs of the Federal customer, the central nonprofit agencies may allocate the commodity or service to one or more nonprofit agencies as appropriate.

(b) After a determination of suitability for approving items on the Procurement List, the Committee will authorize the most capable nonprofit agencies as the mandatory source(s) for commodities or services. Commodities and services may be purchased from nonprofit agencies; central nonprofit agencies; Government central supply agencies, such as the Defense Logistics Agency and General Services Administration; and certain commercial distributors. (Identification of the authorized sources for a particular commodity may be obtained from the central nonprofit agencies indicated by the Procurement List which is found at *www.abilityone.gov*.)

(c) Contracting activities shall require that their contracts with other organizations or individuals, such as prime vendors providing commodities that are already on the Procurement List to Federal agencies, require that the vendor order these commodities from the sources authorized by the Committee.

* * * * *

(e) Contracting activities procuring services, which have included within them services on the Procurement List, shall require their contractors for the larger service requirement to procure the included Procurement List services from nonprofit agencies authorized by the Committee.

(f) If the Committee deauthorizes a nonprofit agency as the mandatory source, the deauthorized nonprofit agency shall ensure as many of its employees who are blind or have other significant disabilities as practicable remain on the job with the new authorized successor nonprofit agency. The successor nonprofit agency is required to offer a right of first refusal of employment under the successor contract to current employees of the deauthorized nonprofit agency who are blind or have other significant disabilities for positions for which they are qualified. The deauthorized nonprofit agency shall disclose necessary personnel records in accordance with all applicable laws protecting the privacy of the employee to allow the successor nonprofit agency to conduct interviews with those identified employees. If selected employees agree, the deauthorized nonprofit agency shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits and other relevant employment and Program eligibility information to the successor nonprofit agency. The requirement to offer the right of first refusal also applies if a nonprofit agency loses an allocation because of a competitive distribution under § 51–3.4(b) of this chapter.

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–04939 Filed 3–10–23; 8:45 am]

BILLING CODE 6353–01–P

Notices

Federal Register
Vol. 88, No. 48
Monday, March 13, 2023

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0021]

Notice of Request for Revision to and Extension of Approval of an Information Collection; APHIS Credit and User Fee Accounts

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's (APHIS') intention to request a revision to and extension of approval of an information collection associated with establishing credit accounts and the collection of user fees for certain reimbursable APHIS services.

DATES: We will consider all comments we receive on or before May 12, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2023–0021 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2023–0021, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the user fee activities covered by this notice, contact Mrs. Kris Caraher, Review and Analysis Branch Chief, Financial Management Division, MRPBS, APHIS, USDA, 4700 River Road, Unit 54, Riverdale, MD 20737–3148; (301) 851–2834; *kris.caraher@usda.gov.* For information on the information collection process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: APHIS Credit and User Fee Accounts.

OMB Control Number: 0579–0055.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Section 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorizes the Animal and Plant Health Inspection Service (APHIS) to establish credit accounts and collect user fees for providing import- and export-related services for animals, plants, animal products, birds, germplasm, organisms, and vectors. In addition, this section authorizes APHIS to collect user fees for certain activities and services it provides such as passenger clearance; veterinary diagnostics tests and reagent sales; issuing certificates and permits; conducting and monitoring inspections and treatments related to the import and export of agricultural products; granting commercial conveyance clearances; and charging overtime fees for activities conducted during nonduty hours. The establishment of credit accounts and the collection of user fees for certain reimbursable APHIS services requires various information collection activities, as described below.

APHIS services may be requested in writing, electronically, by telephone, or in person, and must be specific about the specific service requested and the time it is to be performed. The services are typically provided by a Federal inspector, and the information is necessary to schedule the work and to calculate fees due. Normally, the services are provided during regular working hours. If an importer wishes to have shipments cleared at other hours, such services will usually be provided on a reimbursable overtime basis, unless already covered by a user fee. Exporters wishing cargo to be certified during nonworking hours may also utilize this procedure. Certain recurring customers may request that APHIS bill them. These customers may apply for credit accounts with APHIS. The Agency collects certain information to conduct credit checks on prospective applicants to ensure creditworthiness prior to extending credit services and to prepare billings.

APHIS is responsible for ensuring fees collected are correct and that they are remitted in full and in a timely manner. To ensure this, the party (ticketing agents for transportation companies) responsible for collecting and remitting fees must allow APHIS personnel to verify the accuracy of the fees collected and remitted, and otherwise determine compliance with the statute and regulations. We also require whoever is responsible for making fee payments to advise us of the name, address, and telephone number of a responsible officer who is authorized to verify fee calculations, collections, and remittances.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information

is estimated to average 0.007 hours per response.

Respondents: Individuals and private and commercial importers or exporters of agricultural plants and animals or their products.

Estimated annual number of respondents: 144,209.

Estimated annual number of responses per respondent: 96.

Estimated annual number of responses: 13,866,321.

Estimated total annual burden on respondents: 95,310 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of March 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–05084 Filed 3–10–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Office of Partnerships and Public Engagement

Advisory Committee on Minority Farmers

AGENCY: Office of Partnerships and Public Engagement (OPPE), USDA.

ACTION: Notice of public virtual meeting.

SUMMARY: Pursuant to the provisions of the rules and regulations of the United States Department of Agriculture (USDA) and the Federal Advisory Committee Act (FACA), notice is hereby given that a public meeting of the Advisory Committee on Minority Farmers (ACMF) will be convened. During this public meeting, the ACMF will consider USDA programs, services, and policies, and how they impact minority farmers. USDA Secretary Thomas Vilsack is committed to actions that enhance minority farmers' ability to produce and thrive as businesses through USDA's customer service enhancements, expanded outreach, technical assistance, and capacity building. The ACMF seeks to recommend action-oriented strategies that maximize the participation of minority farmers in USDA programs and services.

DATES: The ACMF public meeting is scheduled for March 28–30, 2023, from 9 a.m. to 5 p.m. Mountain Time (MT)—each day.

Meeting Pre-Registration:

The public is asked to pre-register for the meeting by March 27, 2023, *at https://ems8.intellor.com/?do=register&t=1&p=847170.*

Your pre-registration should include: your name; organization or interest represented; if you plan to give oral comments; and if you require special accommodations. USDA will also accept day-of registrations throughout the meeting. Time will be allotted at the end of each morning and afternoon for comments from those attending in person or virtually. USDA will allow as many individual and organizational comments as time permits.

Oral Comments: Persons or organizations may register for one speaking slot per day. All persons wanting to make oral comments *during* the in-person meeting may check-in each day at the registration table beginning 8:30 a.m. MT. If the number of registrants requesting to speak is greater than what can be reasonably accommodated during the session timeframe, OPPE may conduct a lottery to determine the speakers for the scheduled public comment session.

Written Comments: Written comments for consideration during the public meeting are requested by or before 3:00 p.m. MT, March 30, 2023. The ACMF prefers that all written comments be submitted electronically via the pre-registration link or emailed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section (below). However, written comments may also be submitted (*i.e.,* postmarked) via first class mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** section (below) prior to the deadline. Written comments will be accepted up to 15 days after the public meeting.

Availability of Meeting Materials: All written public comments received by March 28, 2023, will be compiled and available for ACMF member review. Duplicate comments from multiple individuals may be considered as one comment, with a notation that multiple copies of the comment were received. Please visit *https://www.usda.gov/partnerships/advisory-committee-on-minority-farmers* to review the agenda, meeting documents (*e.g.,* presentations), and minutes for this meeting.

Location: The ACMF public advisory meeting will be held at the University of Arizona's BIO5 Institute (Thomas W. Keating Bioresearch Building), 1657 E. Helen St., Tucson, AZ. Public attendees may register upon arrival beginning 8:30 a.m. each day.

Parking is available at the Highland Avenue Garage, 1240 N Highland Ave. Tucson, AZ. Drivers may park at the Highland Avenue Garage for $8 per day, using the Passport Parking application which may be downloaded onto a smartphone. The validation code for the Highland Avenue Garage is 52028. You will also need to include your license plate number.

Virtual Participation: Public participants may also view the committee proceedings and presentations via Zoom at *https://ems8.intellor.com/login/847168.* Meeting ID and passcode is not required.

The call-in numbers and code for listen-only access are:

US Toll Free: 888–251–2949
US Toll: 215–861–0694
Access Code: 7534 676#

FOR FURTHER INFORMATION CONTACT: Ms. R. Jeanese Cabrera, Designated Federal Officer, Office of Partnerships and Public Engagement, 1400 Independence Avenue SW, Mail Stop 0601, Room 524–A, Washington, DC 20250; Phone: (202) 720–6350; Email: *acmf@usda.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the FCC Telecommunications Relay Service (TRS) at 7–1–1 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to section 14008 of the Food Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651, 2008 (7 U.S.C. 2279), to ensure that socially disadvantaged farmers have equal access to USDA programs. The Secretary selected a diverse group of members representing a broad spectrum of persons to recommend solutions to the challenges of minority farmers and ranchers. The members also advise the Secretary on implementation of section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 2501 Program); maximizing the participation of minority farmers and ranchers in USDA programs; and civil rights activities within the Department relative to participants in its programs.

Agenda: USDA agencies will deliver presentations that update the ACMF with the status of relevant programs, services, and policies. Thereafter, the ACMF will explore and examine challenges specific to minority farming communities, including but not limited to: (1) infrastructure and housing; (2) economically viable, ecologically sound, and climate-smart farming and ranching (*e.g.,* planning, building, and business expansion); (3) barriers to minority

farmer and rancher (*i.e.,* producers and farm workers) participation in USDA programs, services, and partnerships; (4) barriers to capital access, land acquisition, debt management; and (5) adverse economic impacts of farming and ranching risk management. The ACMF will submit recommendations on these and related topics for the Secretary's consideration. The ACMF specifically seeks to engage and hear directly from a broad geographical base of minority farmers and ranchers on their experiences, pathways, and challenges as they contend with severe weather events or continued barriers of entry to economically sustainable farming. A final agenda will be available 48 hours prior to the first day of the public meeting minority-farmers) for a final agenda within 48 hours prior to Day 1 of the public meeting. *https://www.usda.gov/partnerships/advisory-committee-on-minority-farmers.*

Dated: March 7, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–05052 Filed 3–10–23; 8:45 am]

BILLING CODE 3412–88–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; cancellation of meeting date.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning a meeting of the Tennessee Advisory Committee. The meeting scheduled for Thursday, March 16, 2023, at 12:00 p.m. (CT) is cancelled. The notice is in the **Federal Register** of Tuesday, February 28, 2023, in FR Doc. 2023–04004, on page 12653–12654 (2 pages).

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, (434) 515–0204. *vmoreno@usccr.gov.*

Dated: March 7, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05031 Filed 3–10–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–017]

Passenger Vehicle Light Truck Tires (PVLT) From China: Final Results of Countervailing Duty Administrative Review; 2020

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain exporters/producers of passenger vehicle light truck tires (PVLT tires) from the People's Republic of China (China) received countervailable subsidies during the period of review (POR) January 1, 2020, through December 31, 2020.

DATES: Applicable March 13, 2023.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski or Richard Roberts, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1395 or (202) 482–3464, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review on September 8, 2022, in the **Federal Register**, and invited interested parties to comment.[1] For a detailed description of the events that occurred subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[2] On December 7, 2022, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce extended the deadline for issuing the final results until March 7, 2023.[3]

Scope of the Order [4]

The products covered by the scope of the *Order* are PVLT tires from China. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

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

Changes Since the Preliminary Results

Based on comments received from interested parties and issues originating from verification, we revised the calculation of the net countervailable subsidy rates for Sumitomo Rubber (Hunan) Co., Ltd. (SRH). For a discussion of the issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found to be countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying all of Commerce's conclusions, including our reliance, in part, on facts otherwise available, including adverse facts available, pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Non-Selected Companies' Rate

Commerce made no changes to the methodology from the *Preliminary Results* for determining a rate for companies not selected for individual examination. However, due to changes in the calculation for SRH, we revised the non-selected rate accordingly. Consequently, for each of the eight non-

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2020,* 87 FR 54961 (September 8, 2022) (*Preliminary Results*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review Passenger Vehicles and Light Truck Tires from the People's Republic of China; 2020,'' dated concurrently with this memorandum (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Extension of Deadline for Final Results of the Countervailing Duty Administrative Review; 2020,'' dated December 7, 2022.

[4] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 47902 (August 10, 2015) (*Order*).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

selected companies for which a review was requested and not rescinded, we are applying an *ad valorem* subsidy rate of 11.05 percent.

Final Results of Review

We find the following net countervailable subsidy rates for the period January 1, 2020, through December 31, 2020, as follows:

Producer or exporter	Subsidy rate (percent *ad valorem*)
Sumitomo Rubber (Hunan) Co., Ltd.[6]	11.05
Review-Specific Average Rate Applicable to the Following Companies[7]	
Jiangsu Hankook Tire Co., Ltd	11.05
Kumho Tire Co., Inc	11.05
Kumho Tire (Tianjin) Co., Inc	11.05
Prinx Chengshan (Shandong) Tire Company Ltd	11.05
Qingdao Nexen Tire Corporation	11.05
Shandong Haohua Tire Co., Ltd	11.05
Shandong Province Sanli Tire Manufactured Co., Ltd	11.05
Triangle Tyre Co., Ltd	11.05

Disclosure

Commerce intends to disclose calculations and analysis performed for the final results of review within five days after the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Assessment Requirements

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after 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).

[6] Commerce finds the following companies to be cross-owned with Sumitomo Rubber (Hunan) Co., Ltd.: Sumitomo Rubber (China) Co., Ltd. and Sumitomo Rubber (Changshu) Co. Ltd.

[7] This rate is based on the rate for the respondent that was selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed companies with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

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

Notification to Interested Parties

The final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: March 7, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Non-Selected Rate
V. Use of Facts Otherwise Available and Application of Adverse Inferences
VI. Subsidies Valuation
VII. Analysis of Programs
VIII. Analysis of Comments
  Comment 1: Whether Commerce Should Continue To Find Use of the Export Buyer's Credit (EBC) Program
  Comment 2: Whether the Provision of Land-Use Rights for Foreign-Invested Enterprises (FIE) for Less Than Adequate Remuneration (LTAR) Is Export-Contingent and Specific
  Comment 3: Whether Commerce Should Find That the Chinese Markets for Carbon Black and Synthetic Rubber Are Distorted
  Comment 4: Whether Commerce Should Include IHS Markit Data in Input Benchmark Calculations
  Comment 5: Whether Commerce Correctly Calculated Inland Freight Costs in the Nylon Cord Benchmark
  Comment 6: Whether the Benchmark for Electricity Includes Value-Added Tax (VAT)
  Comment 7: Whether the Provision of Inputs for LTAR Constitutes a Financial Contribution
IX. Recommendation

[FR Doc. 2023–05105 Filed 3–10–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–145]

Certain Freight Rail Couplers and Parts Thereof From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain freight rail couplers and parts thereof (freight rail couplers) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2022, through June 30, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 13, 2023.

FOR FURTHER INFORMATION CONTACT: Drew Jackson or Zachary Shaykin, 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) 482–4406 or (202) 482–2638, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on October 25, 2022.[1] For a complete

[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) (*Initiation Notice*).

description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are freight rail couplers from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[4] We received several comments concerning the scope of the LTFV investigations of freight rail couplers from China and Mexico. We are currently evaluating the scope comments filed by interested parties. We intend to issue our preliminary decision regarding the scope of these LTFV investigations on or before the preliminary determination in the LTFV investigation of freight rail couplers from Mexico, the deadline for which is April 26, 2023.[5] We will incorporate the scope decisions from the LTFV investigation of freight rail couplers from Mexico into the scope of the final determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs. The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances exist with respect to imports of freight rail couplers from China for the China-wide entity. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[6] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[7] In this case, because no respondent qualified for a separate rate, producer/exporter combination rates were not calculated. For a full description of the separate rate status of interested parties in this investigation, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer/exporter	Estimated weighted-average dumping margin (percent)
China-wide Entity	169.90

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as indicated in the chart above as follows: (1) for all combinations of Chinese producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (2) for all third-country exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the China-wide entity, as stated above.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise from the China-wide entity. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of merchandise from all producers and/or exporters of freight rail couplers from China that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice in the **Federal Register**.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of its 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 preliminarily applied total adverse facts available

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See Initiation Notice.*

[5] *See Certain Freight Rail Couplers and Parts Thereof from Mexico: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 88 FR 10092 (February 16, 2023).

[6] *See Initiation Notice.*

[7] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

(AFA) to the China-wide entity in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the petition, there are no calculations to disclose.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination, unless Commerce alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

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

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

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: March 7, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers certain freight railcar couplers (also known as ''fits'' or ''assemblies'') and parts thereof. Freight railcar couplers are composed of two main parts, namely knuckles and coupler bodies but may also include other items (*e.g.,* coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The parts of couplers that are covered by the investigations include: (1) E coupler bodies, (2) E/F coupler bodies, (3) F coupler bodies, (4) E knuckles, and (5) F knuckles, as set forth by the Association of American Railroads (AAR). The freight rail coupler parts (*i.e.,* knuckles and coupler bodies) are included within the scope of the investigations when imported separately. Coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors are covered merchandise when imported in an assembly but are not covered by the scope when imported separately.

Subject freight railcar couplers and parts are included within the scope whether finished or unfinished, whether imported individually or with other subject or nonsubject parts, whether assembled or unassembled, whether mounted or unmounted, or if joined with nonsubject merchandise, such as other nonsubject parts or a completed railcar. Finishing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, machining, and assembly of various parts. When a subject coupler or subject parts are mounted on or to other nonsubject merchandise, such as a railcar, only the coupler or subject parts are covered by the scope.

The finished products covered by the scope of these investigations meet or exceed the AAR specifications of M–211, ''Foundry and Product Approval Requirements for the Manufacture of Couplers, Coupler Yokes, Knuckles, Follower Blocks, and Coupler Parts'' and/or AAR M–215 ''Coupling Systems,'' or other equivalent domestic or international standards (including any revisions to the standard(s)).

The country of origin for subject couplers and parts thereof, whether fully assembled, unfinished or finished, or attached to a railcar, is the country where the subject coupler parts were cast or forged. Subject merchandise includes coupler parts as defined above that have been further processed or further assembled, including those coupler parts attached to a railcar in third countries. Further processing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, painting, coating, priming, machining, and assembly of various parts. The inclusion, attachment, joining, or assembly of nonsubject parts with subject parts or couplers either in the country of manufacture of the in-scope product or in a third country does not remove the subject parts or couplers from the scope.

The couplers that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 8607.30.1000. Unfinished subject merchandise may also enter under HTSUS statistical reporting number 7326.90.8688. Subject merchandise attached to finished railcars may also enter under HTSUS statistical reporting numbers 8606.10.0000, 8606.30.0000, 8606.91.0000, 8606.92.0000, 8606.99.0130, 8606.99.0160, or under subheading 9803.00.5000 if imported as an Instrument of International Traffic. Subject merchandise may also be imported under HTSUS statistical reporting number 7325.99.5000. These HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of these investigations is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Scope of the Investigation
VI. Selection of Respondents
VII. Discussion of the Methodology
VIII. Recommendation

[FR Doc. 2023–05106 Filed 3–10–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico: Final Results of the 2020–2021 Administrative Review

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that the respondents selected for individual examination, respectively, International Greenhouse Produce, S.A. de C.V. (IGP) and Negocio Agricola San Enrique, S.A. de C.V. (NASE) (collectively, respondents), were in compliance with the terms of the 2019 Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico (2019 Agreement) during the period of review (POR) from September 1, 2020, through August 31, 2021, except for certain instances of inadvertent or inconsequential noncompliance. Commerce also determines that the 2019 Agreement met the applicable statutory requirements during the POR.

DATES: Applicable March 13, 2023.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0162 or (202) 482–0408, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2022, Commerce published the *Preliminary Results* of this administrative review.[1] On November 7, 2022, a member of the U.S. petitioning industry, the Florida Tomato Exchange (FTE), and IGP filed case briefs.[2] On November 18, 2022, FTE filed a rebuttal brief and the respondents filed a joint rebuttal brief.[3] On January 23, 2023, Commerce extended the deadline for the final results to March 6, 2023.[4]

Scope of 2019 Agreement

The merchandise subject to this 2019 Agreement is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this 2019 Agreement, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. In Appendix F of this 2019 Agreement, Commerce has outlined the procedure that Signatories must follow for selling subject merchandise for processing. Fresh tomatoes that are imported for cutting up, not further processing (*e.g.,* tomatoes used in the preparation of fresh salsa or salad bars), are covered by this 2019 Agreement. Commercially grown tomatoes, both for the fresh market and for processing, are classified as Lycopersicon esculentum. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this 2019 Agreement. Tomatoes imported from Mexico covered by this 2019 Agreement are classified under the following subheading of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702. Although this HTSUS number is provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

A full description of the scope of the order is also contained in the Issues and Decision Memorandum.[5]

Analysis

Commerce continues to find, based on record evidence, that the selected respondents, IGP and NASE, were generally in compliance with the terms of the 2019 Agreement during the POR, with the exception of certain inconsequential or inadvertent non-compliance. We intend to consult with the Signatories to the 2019 Agreement under Section VII.G (Operations Consultations) to address the non-compliance identified in the review. Overall, Commerce finds that there have been no material or consequential violations of the 2019 Agreement by the selected respondents during the POR. We also determine that the 2019 Agreement is preventing price suppression or undercutting and can be effectively monitored.

The issues raised in the case and rebuttal briefs are addressed in the accompanying Issues and Decision Memorandum and business proprietary memorandum.[6] The issues are identified in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Notification Regarding Administrative Protective Order

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

Notification to Interested Parties

We are issuing and publishing these results of review in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: March 6, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Issues and Decision Memorandum

I. Summary
II. Scope of the Agreement
III. Background
IV. Discussion of the Issues
1. Calculation Methodology for Analysis of Compliance With Section VI of the 2019 Agreement

[1] *See Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico; Preliminary Results of 2020–2021 Administrative Review,* 87 FR 60994 (October 7, 2022) (*Preliminary Results*).

[2] *See* FTE's Letter, ''Case Brief on Behalf of the Florida Tomato Exchange,'' dated November 7, 2022; IGP's Letter, ''Case Brief of International Greenhouse Produce, S.A. de C.V.,'' dated November 7, 2022.

[3] *See* FTE's Letter, ''Rebuttal Brief on Behalf of the Florida Tomato Exchange,'' dated November 18, 2022; Respondents' Letter, ''Rebuttal Brief of International Greenhouse Produce, S.A. de C.V. and Negocio Agricola San Enrique S.A. de C.V.,'' dated November 18, 2022.

[4] *See* Memorandum, ''Extension of Deadline for Final Results of the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico (2019 Agreement),'' dated January 23, 2023.

[5] *See* Memorandum, ''Decision Memorandum for the Final Results of the 2020–2021 Administrative Review: Fresh Tomatoes from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *Id.; see also* Memorandum, ''Final Analysis of Proprietary Information and Argument Regarding International Greenhouse Produce, S.A. de C.V.,'' dated concurrently with, and hereby adopted by, this notice.

2. Classification of Certain U.S. Sales
3. Alleged Violations of the 2019 Agreement and Requests for Enforcement
4. Reporting Regarding Certain Transactions
5. Adjustments Under Appendix D Based on an Inspection Requested by a Downstream Customer
6. Request for Collection of Cost Data in Future Reviews

V. Recommendation

[FR Doc. 2023–05092 Filed 3–10–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Guam Coastal Management Program; Notice of Public Meeting; Request for Comments

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting and opportunity to comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, will hold an in-person public meeting to solicit input on the performance evaluation of the Guam Coastal Management Program. NOAA also invites the public to submit written comments.

DATES: NOAA will hold an in-person public meeting will be held on Wednesday, May 10, 2023, at 5:30 p.m. Chamorro Standard Time (CHST). NOAA will consider all relevant written comments received by Friday, May 19, 2023.

ADDRESSES: Comments may be submitted by one of the following methods:

In-Person Public Meeting: Provide oral comments during the in-person public meeting on Wednesday, May 10, 2023, at 5:30 p.m. CHST at the Hagat Mayor's Office, 393 Route 2, Hagat, Guam, 96915.

Email: Send written comments to Ralph Cantral, Evaluator, NOAA Office for Coastal Management, at *Ralph.Cantral@noaa.gov.* Include ''Comments on Performance Evaluation of the Guam Coastal Management Program'' in the subject line of the message.

NOAA will accept anonymous comments, however, the written comments received are considered part of the public record, and the entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and Social Security numbers should not be included with the comment. Comments that are not related to the performance evaluation of the Guam Coastal Management Program or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Evaluator, NOAA Office for Coastal Management, by email at *Ralph.Cantral@noaa.gov* or by phone at (843) 474–1357. Copies of the previous evaluation findings, and Assessment and Strategies may be viewed and downloaded at *http://coast.noaa.gov/czm/evaluations/.* A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Ralph Cantral.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved coastal management programs. The evaluation process includes holding one or more public meetings, considering public comments, and consulting with interested Federal, State, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the Territory of Guam has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is complete, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the final evaluation findings.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–05019 Filed 3–10–23; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC831]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits and permit amendments.

SUMMARY: Notice is hereby given that permits and permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore (Permit No. 27079) and Amy Hapeman (Permit No. 23644–02); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS AND PERMIT AMENDMENTS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
23644–02	0648–XC603	Iain Kerr, D.H.L., Ocean Alliance, 32 Horton Street, Gloucester, MA 01930.	87 FR 77077, December 16, 2022.	February 23, 2023.
27079	0648–XC636	Cantata Bio, 100 Enterprise Way, Suite A10, Scotts Valley, CA 95066 (Responsible Party: Jordan Zhang).	87 FR 80526, December 30, 2022.	February 16, 2023.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: March 7, 2023.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–05006 Filed 3–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Wage Mariner Hiring Portal

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 19, 2022 (87 FR 77553) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration, Commerce.

Title: Wage Mariner Hiring Portal.

OMB Control Number: 0648–0790.

Form Number(s): None.

Type of Request: Regular submission [extension of a current information collection].

Number of Respondents: 1,000.

Average Hours per Response: 1 hour.

Total Annual Burden Hours: 1,000 hours.

Needs and Uses: This is a request for extension of an existing information collection. The Wage Mariner Hiring Portal (WMHP) is an internet-based system (website) that is designed to allow an applicant to apply for a ''wage mariner'' position within the National Oceanic and Atmospheric Administration (NOAA) fleet of maritime vessels. The WMHP system collects basic user information, wage mariner licensing, certifications, and relevant current and or past work history. The Department of Commerce (DOC), through NOAA, Office of Marine and Aviation Operations (OMAO) has special hiring authority under Code of Federal Regulations (CFR), title 5, chapter 1, subchapter A, part 3, § 3.2 and under the DOC Department Administrative Order (DAO) 202–302 section 2, subsection .02a. specific to the hiring of Federal wage mariner employees. The regulations allow OMAO to hire wage mariners into excepted service positions within the NOAA fleet of ocean going vessels in order to maintain adequate operations, maintenance, and safe staffing of the maritime ships.

No physical forms are used in this collection, it is all online. Applicants fill out basic personal, licensure, and work history information into a profile resume. Once their basic profile is complete, applicants can submit this resume to available wage mariner positions as shown on the WMHP website. The application information received is used to determine if the applicant meets the basic job qualification. The applicant's information is then passed on to the hiring official or it is placed in a pool of prospective candidates for future openings. Application information includes: first and last name, contact number and email address, wage mariner licenses and certifications, relevant work history.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Code of Federal Regulations (CFR), title 5, chapter 1, subchapter A, part 3, § 3.2.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0790.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–05111 Filed 3–10–23; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC821]

Endangered and Threatened Species; Notice of Initiation of a 5-Year Review for the Arabian Sea, Cape Verde Islands/Northwest Africa, Central America, Mexico, and Western North Pacific Distinct Population Segments of Humpback Whales

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

ACTION: Notice of initiation, request for information.

SUMMARY: NMFS announces the initiation of a 5-year review for the Arabian Sea, Cape Verde Islands/Northwest Africa, Central America, Mexico, and Western North Pacific Distinct Population Segments of the humpback whale (*Megaptera novaeangliae*). NMFS is required by the Endangered Species Act (ESA) to conduct 5-year reviews to ensure that the listing classifications of species are accurate. The 5-year review must be based on the best scientific and commercial data available at the time of the review. We request submission of any such information on the humpback whale.

DATES: To allow us adequate time to conduct this review, we must receive

your information no later than April 12, 2023.

ADDRESSES: You may submit information on this document, identified by NOAA–NMFS–2023–0029 by the following method:

• *Electronic Submission:* Submit electronic information via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2023–0029 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

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

FOR FURTHER INFORMATION CONTACT: Meghan Gahm at (301) 427–8494 or *meghan.gahm@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice announces our review of the five distinct population segments (DPSs) of the humpback whale (*Megaptera novaeangliae)* listed as endangered or threatened under the ESA. Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every 5 years. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species currently under active review. On the basis of such reviews under section 4(c)(2)(B), we determine whether any species should be removed from the list (*i.e.,* delisted) or reclassified from endangered to threatened or from threatened to endangered (16 U.S.C. 1533(c)(2)(B)). As described by the regulations in 50 CFR 424.11(e), the Secretary shall delist a species if the Secretary finds that, after conducting a status review based on the best scientific and commercial data available: (1) the species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species; and/or (3) the listed entity does not meet the statutory definition of a species. Any change in Federal classification would require a separate rulemaking process.

Background information on the species is available on the NMFS website at: *https://www.fisheries.noaa.gov/species/humpback-whale*.

Public Solicitation of New Information

To ensure that the review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of *Megaptera novaeangliae*. Categories of requested information include: (1) species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and important features for conservation; (3) status and trends of threats to the species and its habitats; (4) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; and (5) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes and improved analytical methods for evaluating extinction risk.

If you wish to provide information for the review, you may submit your information and materials electronically (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 8, 2023.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources National Marine Fisheries Service.

[FR Doc. 2023–05102 Filed 3–10–23; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on April 5, 2023, from 9:00 a.m. to 12:00 p.m. (Eastern Daylight Time), the Agricultural Advisory Committee (AAC) will hold a public meeting via teleconference. At this meeting, the AAC will focus on topics related to the agricultural economy, including geopolitical and sustainability issues, as well as recent developments in the agricultural derivatives markets.

DATES: The meeting will be held on April 5, 2023, from 9:00 a.m. to 12:00 p.m. (Eastern Daylight Time). Please note that the teleconference may end early if the AAC has completed its business. Members of the public who wish to submit written statements in connection with the meeting should submit them by April 12, 2023.

ADDRESSES: The meeting will be held via teleconference. You may submit public comments, identified by ''Agricultural Advisory Committee,'' through the CFTC website at *https://comments.cftc.gov*. Follow the instructions for submitting comments through the Comments Online process on the website. If you are unable to submit comments online, contact Swati R. Shah, Designated Federal Officer, via the information listed under **FOR FURTHER INFORMATION CONTACT** to discuss alternate means of submitting your comments. Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, *https://www.cftc.gov*.

FOR FURTHER INFORMATION CONTACT: Swati R. Shah, AAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5042; or *aac@cftc.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Members of the public may listen to the meeting by telephone by calling a domestic or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll Free Numbers: 833–568–8864 or 833–435–1820.

Domestic Toll Numbers (for higher quality, dial a number based on your current location): 1–669–254–5252 or 1–646–964–1167 or 1–646–828–7666 or 1–669–216–1590 or 1–415–449–4000 or 1–551–285–1373.

International Toll and Toll Free: Will be posted on the CFTC's website, *https://www.cftc.gov,* on the page for the meeting, under Related Links.

Call-In/Webinar ID: 161 035 4995.

Pass Code/Pin Code: 381448.

Members of the public may also view a live webcast of the meeting via the *www.cftc.gov* website. The meeting agenda may change to accommodate other AAC priorities. For agenda updates, please visit the AAC committee

site at: *https://www.cftc.gov/About/AdvisoryCommittees/AAC*.

After the meeting, a transcript of the meeting will be published through a link on the CFTC's website, *https://www.cftc.gov*. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

(Authority: 5 U.S.C. 1009(a)(2).)

Dated: March 8, 2023.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2023–05088 Filed 3–10–23; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, March 15, 2023—10:00 a.m.

PLACE: The meeting will be held remotely, and in person at 4330 East-West Highway, Bethesda, Maryland 20814.

STATUS: Commission meeting—open to the public.

MATTERS TO BE CONSIDERED: *Briefing Matter:* Supplemental Notice of Proposed Rulemaking: Safety Standard for Portable Generators.

To attend virtually, please pre-register using the following link: *https://cpsc.webex.com/cpsc/j.php?MTID=m3f93aaf969db17b5120ddfd3d61a0412.*

After registering you will receive a confirmation email containing information about joining the meeting.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, 301–504–7479 (office) or 240–863–8938 (cell).

Dated: March 8, 2023.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2023–05140 Filed 3–9–23; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Department of the Air Force Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Air Force Scientific Advisory Board, USAF.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice in accordance with the Federal Advisory Committee Act to announce that the following meeting of the Department of the Air Force Scientific Advisory Board will take place.

DATES: Closed to the public. 30 March 2023 from 1:00 p.m.–4:45 p.m. and 31 March 2023 from 8:15 a.m. to 9:30 a.m. Central Time.

ADDRESSES: The meeting will be held at Eglin Air Force Base, 101 West D Avenue, Eglin AFB, FL 32542.

FOR FURTHER INFORMATION CONTACT: Lt Col Blythe Andrews, (240) 470–4566 (Voice), *blythe.andrews@us.af.mil* (Email). Mailing address is 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762. Website: *https://www.scientificadvisoryboard.af.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, United States Code (as enacted on Dec. 27, 2022, by section 3(a) of Pub. L. 117–286) (formerly the Federal Advisory Committee Act, 5 U.S.C. appendix), section 552b of title 5, United States Code (popularly known as the Government in the Sunshine Act), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of this meeting of the Department of the Air Force Scientific Advisory Board is to conduct mid-term reviews of the Department of the Air Force Scientific Advisory Board FY23 studies, offering board members the opportunity to hear directly from the Study Chairs on the progress they have made thus far and provide dedicated time to continue collaboration on research.

Agenda: [All times are Central Time] 30 March 2023: 1:00 p.m.–1:15 p.m. FY23 Study Remarks 1:15 p.m.–1:45 p.m. FY24 S&T Review Update 1:45 p.m.–2:30 p.m. Developmental and Operational Testing Brief 2:30 p.m.–2:45 p.m. Break 2:45 p.m.–3:30 p.m. Assessing Advanced Aerospace Mobility Concepts Brief 3:30 p.m.–4:15 p.m. Scalable Approaches to Resilient Air Operations Brief 4:15 p.m.–4:45 p.m. Closing Remarks. 31 March 2023: 8:15 a.m.–8:30 a.m. Opening Remarks 8:30 a.m.–9:15 a.m. Air and Surface Moving Target Indication Brief 9:15 a.m.–9:30 a.m. Closing Remarks In accordance with section 1009(d) of title 5, United States Code (formerly sec. 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix) and 41 CFR 102–3.155, the Administrative Assistant of the Air Force, in consultation with the Air Force General Counsel, has agreed that the public interest requires this meeting of the United States Department of the Air Force Scientific Advisory Board be closed to the public because it will involve discussions involving classified matters covered by section 552b(c)(1) of title 5, United States Code.

Written Statements: Any member of the public wishing to provide input to the United States Department of the Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c), section 1009(a)(3) of title 5, United States Code (formerly sec. 10(a)(3) of the Federal Advisory Committee Act), and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed above at any time. The Designated Federal Officer will review all submissions with the Department of the Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the Department of the Air Force Scientific Advisory Board. Written statements received after the meeting that is the subject of this notice may not be considered by the Scientific Advisory Board until the next scheduled meeting.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023–05005 Filed 3–10–23; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA BoV)

AGENCY: Department of the Army, DoD.

ACTION: Notice of open federal advisory committee meeting: in person.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, the Department of Defense announces that the following Federal advisory committee meeting will take place.

DATES: The meeting will be held on Tuesday, 28 March 2023, Time 9:00 a.m.–12:00 p.m. Members of the public wishing to attend the meeting will be required to show a government photo ID upon entering in order to gain access to the meeting location. All members of the public are subject to security screening.

ADDRESSES: The meeting will be held in the Library of Congress Building, Members Room, 101 Independence Avenue SE, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Espinal, the Designated Federal Officer for the committee, in writing at: United States Military Academy—Secretary of the General Staff, ATTN: Anthony Espinal, 646 Swift Road, West Point, NY 10996; by email at: *anthony.espinal@westpoint.edu* or *BoV@westpoint.edu*; or by telephone at (845) 938–3384.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The USMA BoV provides independent advice and recommendations to the President of the United States on matters related to morale, discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and any other matters relating to the Academy that the Board decides to consider.

Purpose of the Meeting: This is the 2023 Organizational Meeting of the USMA BoV. Members of the Board will be provided updates on Academy issues. Agenda: Introduction; Board Business: Elect Chair and Vice Chair for 2023, Swearing in of Presidential Appointees, Vote to approve the ''2023 Rules of the US Military Academy Board of Visitors,'' Approve of the Minutes from October's Meeting, select Summer meeting date; Superintendent's Remarks; Open Discussion; Strategy Update: Develop Leaders of Character; Cultivate a Culture of Character Growth; and Build Diverse and Effective Teams.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Mr. Espinal, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Pursuant to 41 CFR 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting, and members of the public attending the committee meeting will not be permitted to present questions from the floor or speak to any issue under consideration by the committee. Because the committee meeting will be held in a Federal Government facility security screening is required. A government photo ID is required to enter the building. The Library of Congress Building is fully handicapped accessible. Wheelchair access is available at 10 First Street SE, Washington, DC. Enter on First Street or Second Street side of building.

For additional information about public access procedures, contact Mr. Espinal, the committee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the committee, in response to the stated agenda of the open meeting or in regard to the committee's mission in general. Written comments or statements should be submitted to Mr. Espinal, the committee Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Official at least seven business days prior to the meeting to be considered by the committee. The Designated Federal Official will review all timely submitted written comments or statements with the committee Chairperson and ensure the comments are provided to all members of the committee before the meeting. Written comments or statements received after this date may not be provided to the committee until its next meeting.

Pursuant to 41 CFR 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting. However, the committee Designated Federal Official and Chairperson may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the committee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

James W. Satterwhite Jr.,

Federal Register Liaison Officer.

[FR Doc. 2023–05096 Filed 3–10–23; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Closed to the public Tuesday, March 21, 2023 from 8:15 a.m. to 5 p.m. and Wednesday, March 22, 2023 from 8:15 a.m. to 4 p.m.

ADDRESSES: Executive Conference Center, 4075 Wilson Blvd., Floor 3, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Doxey, Designated Federal Officer (DFO), (703) 571–0081 (Voice), (703) 697–1860 (Facsimile), *kevin.a.doxey.civ@mail.mil* (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140. Website: *http://www.acq.osd.mil/dsb/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of Chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the Federal Advisory Committee Act (FACA)), section 552b(c) of title 5, U.S.C. (commonly known as the Government in the Sunshine Act), and sections 102–3.140 and 102–3.150 of 41 CFR.

Due to circumstances beyond the control of the Designated Federal Officer, the Defense Science Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its March 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: The mission of the DSB is to provide independent

advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. DSB membership will meet to discuss the 2023 DSB Summer Study on Climate Change and Global Security (''the DSB Summer Study'').

Agenda: The meeting will begin on Tuesday, March 21, 2023 at 8:15 a.m. with administrative opening remarks from Mr. Kevin Doxey, DFO and Executive Director, and a classified overview of the objectives of the Summer Study from Dr. Eric Evans, the DSB Chair. Next, the DSB members will meet in a plenary session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. DSB members will hear classified remarks from Mr. Greg Pollock, Principal Director, Office of Arctic and Global Resilience Policy, regarding an Arctic & Global Resilience Overview. Next, the DSB members will meet in a plenary session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. Following break, DSB members will hear classified remarks from Ms. Kristina O'Brien, Principal Deputy Director for Logistics, Office of the Joint Staff, J4 Director of Logistics, regarding climate change stresses. Next, the DSB members will meet in a plenary session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. Next, members will meet in a breakout session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. The meeting will adjourn at 5 p.m. On Wednesday, March 22, 2023, the DSB members will meet in a breakout session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. Next, the DSB members will meet in a plenary session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. Following break, the DSB members will meet in a plenary session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. The meeting will adjourn at 4 p.m.

Meeting Accessibility: In accordance with 5 U.S.C. 1009(d) and 41 CFR 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense for Research and Engineering, in consultation with the DoD Office of the General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense for Research and Engineering.

Written Statements: In accordance with 5 U.S.C. 1009(a)(3) and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO at the email address provided in the **FOR FURTHER INFORMATION CONTACT** section at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: March 8, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–05103 Filed 3–10–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group; Notice of Federal Advisory Committee Closed Meeting

AGENCY: Office of the Chairman of the Joint Chiefs of Staff, Department of Defense (DoD).

ACTION: Notice of Federal advisory committee closed meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal advisory committee meeting of the U.S. Strategic Command Strategic Advisory Group will take place.

DATES: Day 1—Closed to the public Wednesday, March 29, 2023, from 9:00 a.m. to 5:00 p.m. and Day 2—Closed to the public Thursday, March 30, 2023, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: 900 SAC Boulevard, Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Olson, Designated Federal Officer (DFO), (402) 912–0322 (Voice), *mark.j.olson.civ@mail.mil* (Email). Mailing address is 900 SAC Boulevard, Suite N3.170, Offutt AFB, Nebraska 68113.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of the United States Code (U.S.C.) (commonly known as the Federal Advisory Committee Act or FACA), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140.

Purpose of the Meeting: The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda: Topics include: Stockpile Assessment, Operational Risk and Cost Framework for Next Generation NC3 Capabilities, NC3 Readiness and Sustainment, USSTRATCOM Inter-Combatant Command Planning and Coordination, Resource Sharing in Parallel and Phased Planning and Engagements in Cyber, Nuclear Weapons Tracking, and Multi-Party Nuclear Dynamics and Deterrence.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the DoD has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, General Anthony J. Cotton, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1).

Written Statements: Pursuant to 41 CFR 102–3.140(c), the public or interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's DFO; the DFO's contact information can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/*. Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual

comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

Dated: March 8, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–05112 Filed 3–10–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education (NACIE)

AGENCY: National Advisory Council on Indian Education (NACIE), U.S. Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the agenda, time, and instructions to access or participate in the March 30–31, 2023, virtual meeting of NACIE. This notice provides information about the meeting to members of the public who may be interested in attending the meeting and how to provide written comment for the meeting.

DATES: The NACIE open virtual meeting will be held on March 30–31, 2023, from 1:00–4:30 p.m. (EST).

FOR FURTHER INFORMATION CONTACT: Crystal C. Moore, Designated Federal Official, Office of Elementary and Secondary Education (OESE)/Office of Indian Education (OIE), U.S. Department of Education, 400 Maryland Avenue SW, Office 3W243, Washington, DC 20202. Telephone: 202–453–5593, Email: *Crystal.Moore@ed.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required by section 1009(a)(2) of 5 U.S.C. chapter 10 (Federal Advisory Committees).

Statutory Authority and Function: NACIE is authorized by section 6141 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (20 U.S.C. 7471). The work of NACIE was expanded by Executive Order 14049. In accordance with section 6141 of the ESEA, NACIE shall advise the Secretary of Education and the Secretary of Interior on the funding and administration (including the development of regulations and administrative policies and practices) of any program, including any program established under title VI, part A of the ESEA, with respect to which the Secretary of Education has jurisdiction and (1) that includes Indian children or adults as participants or (2) that may benefit Indian children or adults. Also in accordance with section 6141 of the ESEA, NACIE shall make recommendations to the Secretary of Education for filling the position of Director of Indian Education whenever a vacancy occurs and shall submit to the Congress, no later than June 30 of each year, a report on its activities that includes recommendations that are considered appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program. In accordance with section 3 of Executive Order 14049, NACIE shall advise the Co-Chairs of the White House Initiative on Advancing Educational Equity, Excellence and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities (Initiative), in consultation with the Initiative, on: (1) what is needed for the development, implementation, and coordination of educational programs and initiatives to improve educational opportunities and outcomes for Native Americans; (2) how to promote career pathways for in-demand jobs for Native American students, including registered apprenticeships as well as internships, fellowships, mentorships, and work-based learning initiatives; (3) ways to strengthen Tribal Colleges and Universities and increase their participation in agency programs; (4) how to increase public awareness of and generate solutions for the educational and training challenges and equity disparities that Native American students face and the causes of these challenges and disparities; (5) approaches to establish local and national partnerships with public, private, philanthropic, and nonprofit stakeholders to advance the policy set forth in Section 1 of Executive Order 14049, consistent with applicable law; and (6) actions for promoting, improving, and expanding educational opportunities for Native languages, traditions, and practices to be sustained through culturally responsive education. Also, in accordance with section 3 of Executive Order 14049, NACIE and the Executive Director of the Initiative (Executive Director) shall, as appropriate and consistent with applicable law, facilitate frequent collaborations among the Initiative and Tribal Nations, Alaska Native Entities, and other Tribal organizations. Finally, in accordance with section 3 of Executive Order 14049, NACIE shall consult with the Executive Director so that the Executive Director can address NACIE's efforts pursuant to section 3(a) of Executive Order 14019 in the annual report of the Initiative submitted to the President.

Meeting Agenda: The purpose of this meeting is to convene NACIE and conduct the following business: discussion of bylaws and charter; taking action to establish meeting calendar and subcommittees; discussion of recommendations to be provided to the Secretary of Interior and Secretary of Education, including the U.S. Department of Education's budget request; discussion of annual report action item follow-up; and discussion of invited federal partner updates, *e.g.,* U.S. Department of the Interior, Bureau of Indian Education (BIE), White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities (Initiative) in accordance with Section 3 of Executive Order 14049, U.S. Department of Education, Office of Special Education and Rehabilitative Services, and similar programs.

Instructions for Accessing the Meeting: Members of the public may access the NACIE meeting via teleconference and the web. Up to 350 lines will be available on a first come, first served basis for those who wish to join via teleconference. The dial-in listen only phone number for the meeting is 1–669–254–5252, Meeting ID: 161 715 5166. The web link to register to access the meeting via *Zoom.gov* is *https://www.zoomgov.com/meeting/register/vJItdOyvqD8pHctuvcklMKeb5VEMECKgKTk.*

Public Comment: Members of the public interested in submitting written comments may do so via email to Crystal Moore at *Crystal.Moore@ed.gov* by 11:59 p.m. EST on March 30–31, 2023. Please note, written comments should pertain to the work of NACIE.

Reasonable Accommodations: The virtual meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than March 23, 2023. 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.

Access to Records of the Meeting: The Department will post the official

minutes of this meeting on the OESE website, *https://oese.ed.gov/offices/office-of-indian-education/national-advisory-council-on-indian-education-oie/,* 21 days after the meeting. Pursuant to the 5 U.S.C. 1009(b), the public may also inspect NACIE records at the Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202, Monday–Friday, 8:30 a.m. to 5:00 p.m. EST. Please email Crystal Moore at *Crystal.Moore@ed.gov* to schedule an appointment.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free 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 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.

Authority: Section 6141 of the ESEA, as amended (20 U.S.C. 7471).

James F. Lane,

Senior Advisor, Office of the Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023–05079 Filed 3–10–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of partially-closed virtual meeting.

SUMMARY: This notice announces a partially-closed meeting of the President's Council of Advisors on Science and Technology (PCAST). This meeting will be held virtually for members of the public and in-person for PCAST members. The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, March 30, 2023; 9:40 a.m.–1:30 p.m. ET.

ADDRESSES: Information to participate virtually can be found on the PCAST website closer to the meeting at: *www.whitehouse.gov/PCAST/meetings.*

FOR FURTHER INFORMATION CONTACT: Dr. Reba Bandyopadhyay, Designated Federal Officer, PCAST, email: *PCAST@ostp.eop.gov.* Telephone (202) 881–7163.

SUPPLEMENTARY INFORMATION: PCAST is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from the White House, cabinet departments, and other Federal agencies. See the Executive Order at *whitehouse.gov.* PCAST is consulted on and provides analyses and recommendations concerning a wide range of issues where understanding of science, technology, and innovation may bear on the policy choices before the President. The Designated Federal Officer is Dr. Reba Bandyopadhyay. Information about PCAST can be found at: *www.whitehouse.gov/PCAST.*

Tentative Agenda

Open Portion of the Meeting: PCAST will discuss and consider for approval reports from the Public Health Sub-Committee and the Extreme Weather Risk Sub-Committee. PCAST will also hear from representative(s) of the Department of Transportation and will discuss the Advanced Research Projects Agency—Infrastructure (ARPA–I) initiative. Additional information and the meeting agenda, including any changes that arise, will be posted on the PCAST website at: *www.whitehouse.gov/PCAST/meetings.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately one hour with the President on March 30, 2023, which must take place in the White House for scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because a portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Participation: The meeting is open to the public. The meeting will be held virtually for members of the public. It is the policy of the PCAST to accept written public comments no longer than 10 pages and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. The public comment period for this meeting will take place on March 30, 2023, at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on PCAST's work, not for business or marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *PCAST@ostp.eop.gov*, no later than 12:00 p.m. Eastern Time on March 23, 2023. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 10 minutes. If more speakers register than there is space available on the agenda, PCAST will select speakers on a first-come, first-served basis from those who registered. Those not able to present oral comments may file written comments with the council.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to *PCAST@ostp.eop.gov* no later than 12:00 p.m. Eastern Time on March 23, 2023, so that the comments can be made available to the PCAST members for their consideration prior to this meeting.

PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST website at: *www.whitehouse.gov/PCAST/meetings.*

Minutes: Minutes will be available within 45 days at: *www.whitehouse.gov/PCAST/meetings.*

Signed in Washington, DC, on March 7, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–04999 Filed 3–10–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1239–000]

USG Nevada LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of USG Nevada LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for

blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

Dated: March 6, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05017 Filed 3–10–23; 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 & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP23–77–000.

Applicants: Columbia Gas of Virginia, Inc.

Description: Columbia Gas of Virginia submits Application for a Certificate of Public Convenience and Necessity to transport and sell natural gas in interstate commerce as though it were an intrastate pipeline.

Filed Date: 2/24/23.

Accession Number: 20230224–5200.

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: RP23–561–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20230303 Negotiated Rate to be effective 3/4/2023.

Filed Date: 3/3/23.

Accession Number: 20230303–5220.

Comment Date: 5 p.m. ET 3/15/23.

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: March 6, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05014 Filed 3–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1237–000]

SR Snipesville III, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of SR Snipesville III, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

Dated: March 6, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05015 Filed 3–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1208–000]

North Central Valley Energy Storage, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of North Central Valley Energy Storage, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

Dated: March 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05100 Filed 3–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1236–000]

SR McNeal, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of SR McNeal, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

Dated: March 6, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05016 Filed 3–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8632–021]

City of Kankakee, Illinois; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 8632–021.

c. *Date Filed:* January 27, 2023.

d. *Submitted By:* City of Kankakee, Illinois (City of Kankakee).

e. *Name of Project:* Kankakee Hydroelectric Project (project).

f. *Location:* The existing project is located on the Kankakee River in Kankakee County, Illinois. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Zachary Newton, Manager of Sewer Services, City of Kankakee, Illinois, 295 North Harrison Avenue Kankakee, IL 60901; phone: (815) 933–0454; email: *zjnewton@citykankakee-il.gov.*

i. *FERC Contact:* Laura Washington at (202) 502–6072; or email at *Laura.Washington@ferc.gov.*

j. The City of Kankakee filed its request to use the Traditional Licensing Process on January 27, 2023. The City of Kankakee provided public notice of its request on February 1, 2023. In a letter dated March 7, 2023, the Director of the Division of Hydropower Licensing approved the request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or National Oceanic and Atmospheric Administration (NOAA) Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation the Illinois State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the City of Kankakee as the Commission's non-federal representatives for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. The City of Kankakee filed a Pre-Application Document (PAD), including a proposed process plan and schedule for the project with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (*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,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 8632. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2026.

p. 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, contact FERC Online Support.

Dated: March 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05097 Filed 3–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2652–005.
Applicants: Caddo Wind, LLC.
Description: Notice of Non-Material Change in Status of Caddo Wind, LLC.
Filed Date: 3/3/23.
Accession Number: 20230303–5257.
Comment Date: 5 p.m. ET 3/24/23.

Docket Numbers: ER22–1841–002.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Compliance filing: Final Order Compliance Filing to be effective 2/23/2023.
Filed Date: 3/6/23.
Accession Number: 20230306–5139.
Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: ER23–937–000.
Applicants: Chevelon Butte RE LLC.
Description: Supplement to January 26, 2023, Chevelon Butte RE LLC tariff filing.
Filed Date: 3/3/23.
Accession Number: 20230303–5256.
Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: ER23–1245–000.
Applicants: ENBALA Power Networks (USA), Inc.
Description: Tariff Amendment: MBR Cancellation Notice to be effective 3/31/2023.
Filed Date: 3/6/23.
Accession Number: 20230306–5000.
Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: ER23–1246–000.
Applicants: Generac Grid Services LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate Authority to be effective 4/1/2023.
Filed Date: 3/6/23.
Accession Number: 20230306–5001.
Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: ER23–1247–000.
Applicants: PacifiCorp.
Description: Tariff Amendment: Termination of WAPA Buffalo Head Boundary Meters Agreement to be effective 5/25/2023.
Filed Date: 3/6/23.
Accession Number: 20230306–5040.
Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: ER23–1248–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Service Agreement FERC No. 891 to be effective 2/6/2023.
Filed Date: 3/6/23.
Accession Number: 20230306–5048.
Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: ER23–1249–000.
Applicants: Puget Sound Energy, Inc.
Description: § 205(d) Rate Filing: Proposed Amendments to the PSE OATT to be effective 5/2/2023.
Filed Date: 3/6/23.
Accession Number: 20230306–5052.
Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: ER23–1250–000.
Applicants: Interstate Gas Supply, LLC.
Description: Baseline eTariff Filing: Notice of Succession—Company Name Change to be effective 3/6/2023.
Filed Date: 3/6/23.
Accession Number: 20230306–5069.
Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: ER23–1251–000.
Applicants: San Jacinto Grid, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 5/6/2023.
Filed Date: 3/6/23.
Accession Number: 20230306–5118.
Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: ER23–1252–000.
Applicants: Ortega Grid, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 5/6/2023.
Filed Date: 3/6/23.
Accession Number: 20230306–5123.
Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: ER23–1254–000.
Applicants: Arizona Public Service Company.
Description: Tariff Amendment: Rate Schedule No. 307-Notice of Cancellation to be effective 5/6/2023.
Filed Date: 3/6/23.
Accession Number: 20230306–5129.
Comment Date: 5 p.m. ET 3/27/23.

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: March 6, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05010 Filed 3–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1238–000]

ORNI 36 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of ORNI 36 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

Dated: March 6, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05013 Filed 3–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1251–000]

San Jacinto Grid, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of San Jacinto Grid, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all

interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

Dated: March 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05099 Filed 3–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1246–000]

Generac Grid Services, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Generac Grid Services LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

Dated: March 6, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05009 Filed 3–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1252–000]

Ortega Grid, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Ortega Grid, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

Dated: March 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05098 Filed 3–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1241–000]

IP Oberon, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of IP Oberon, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

Dated: March 6, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05011 Filed 3–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–29–000.

Applicants: Brantley Farm Solar, LLC, Buckleberry Solar, LLC, Fox Creek Farm Solar, LLC, Innovative Solar 54, LLC, Innovative Solar 67, LLC.

Description: Brantley Farm Solar, LLC, et. al. submits Response to the February 3, 2023, Deficiency Letter.

Filed Date: 3/6/23.

Accession Number: 20230306–5188.

Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: EC23–59–000.

Applicants: FirstEnergy Corp., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Ohio Edison Company, Mid-Atlantic Interstate Transmission, LLC, FirstEnergy Pennsylvania Electric Company, FirstEnergy Pennsylvania Holding Company LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of FirstEnergy Corp., et al.

Filed Date: 3/6/23.

Accession Number: 20230306–5202.

Comment Date: 5 p.m. ET 3/27/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–646–001.

Applicants: Wagon Wheel Wind Project Holdings LLC.

Description: Tariff Amendment: Supplement to Market-Based Rate Application and Response to Deficiency Letter to be effective 5/7/2023.

Filed Date: 3/7/23.

Accession Number: 20230307–5039.

Comment Date: 5 p.m. ET 3/28/23.

Docket Numbers: ER23–647–001.

Applicants: Diversion Wind Energy Holdings LLC.

Description: Tariff Amendment: Supplement to Market-Based Rate Application and Response to Deficiency Letter to be effective 5/7/2023.

Filed Date: 3/7/23.

Accession Number: 20230307–5038.

Comment Date: 5 p.m. ET 3/28/23.

Docket Numbers: ER23–1253–000.

Applicants: White Tail Solar, LLC.

Description: Request for Limited and Prospective Tariff Waiver, et al. of White Tail Solar, LLC.

Filed Date: 3/2/23.

Accession Number: 20230302–5211.

Comment Date: 5 p.m. ET 3/23/23.

Docket Numbers: ER23–1255–000.

Applicants: Hecate Grid Clermont 1 LLC.

Description: Hecate Grid Clermont 1 LLC submits Limited Waiver Request of Sections 30.8.1 and 30.3.6 of Attachment X of NYISO OATT.

Filed Date: 3/3/23.

Accession Number: 20230303–5267.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: ER23–1256–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 315, ANPP Interconnection Agreement with Sonoran Solar Energy to be effective 5/7/2023.

Filed Date: 3/7/23.

Accession Number: 20230307–5057.

Comment Date: 5 p.m. ET 3/28/23.

Docket Numbers: ER23–1257–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: E&P LA, City of Vernon EAK048 Data Centers Load Project, RS531 to be effective 3/8/2023.

Filed Date: 3/7/23.

Accession Number: 20230307–5059.

Comment Date: 5 p.m. ET 3/28/23.

Docket Numbers: ER23–1258–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 79 to be effective 5/8/2023.

Filed Date: 3/7/23.
Accession Number: 20230307–5075.
Comment Date: 5 p.m. ET 3/28/23.

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: March 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05101 Filed 3–10–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10591–01–R6]

Notice of Proposed Administrative Settlement Agreement and Order on Consent Cashout Settlement for Ability To Pay Peripheral Parties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a proposed CERCLA Section 122(h)(1) Cashout Settlement Agreement for Ability to Pay Peripheral Parties (''Proposed Agreement'') associated with the Donna Reservoir and Canal Superfund Site in Donna, Hidalgo County, Texas (''Site'') was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims under section 107(a) of CERCLA, against Donna Irrigation District #1 (''Settling Party'') for EPA response costs at the Donna Reservoir and Canal Superfund Site located in Donna, Texas. The settlement is $100,000 and was based on an Ability to Pay Analysis, which concluded the settling party shall make payment for EPA response costs.

For thirty (30) days following the date of publication of this notice, EPA will receive electronic comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection by request. Please see the **ADDRESSES** section of this notice for special instructions in effect due to impacts related to the COVID–19 pandemic.

DATES: Comments must be received on or before April 12, 2023.

ADDRESSES: As a result of impacts related to the COVID–19 pandemic, requests for documents and submission of comments must be via electronic mail except as provided below. The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection upon request by contacting EPA Assistant Regional Counsel Matthew Miller at *Miller.matthew@epa.gov.* Comments must be submitted via electronic mail to this same email address and should reference the ''Donna Reservoir and Canal'' Superfund Site, Proposed Settlement Agreement'' and ''EPA CERCLA Docket No. 06–01–23''. Persons without access to electronic mail may call Mr. Miller at (214) 665–6406 to make alternative arrangements.

FOR FURTHER INFORMATION CONTACT: Matthew Miller at EPA by phone (214) 665–6406 or email at: *matthew.miller@epa.gov.*

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–05087 Filed 3–10–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R02–OAR–2023–0047; FRL–10617–01–R2]

Adequacy Status of Motor Vehicle Emissions Budgets for the New Jersey Portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT, 2008 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, the EPA is notifying the public that it has found that the 2020 motor vehicle emissions budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X), submitted by the New Jersey Department of Environmental Protection on November 18, 2021, for the 2008 national ambient air quality standard (NAAQS) for ozone (the Budgets), are adequate for transportation conformity purposes for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT, 2008 8-hour ozone nonattainment area. This revision to the State Implementation Plan (SIP) included 2020 summer day VOC and NO_X Budgets associated with the SIP's reasonable further progress demonstration.

DATES: This finding is effective March 28, 2023.

FOR FURTHER INFORMATION CONTACT: Lily Black, Environmental Protection Agency Region 2, Air and Radiation Division, 290 Broadway, 25th Floor, New York, New York 10007–1866; (212) 637–3884, *black.lily@epa.gov.*

ADDRESSES: Publicly available docket materials, identified by EPA–R02–OAR–2023–0047, are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays). For further information on the EPA Docket Center services and the current status, see: *https://www.epa.gov/dockets.* You may access this **Federal Register** document electronically from *https://www.federalregister.gov/documents/current.* This finding will also be available at the EPA's conformity website: *https://www.epa.gov/state-and-local-transportation/conformity-adequacy-review-region-2.*

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

Today's notice is an announcement of a finding that we have already made. EPA Region 2 sent a letter to the New Jersey Department of Environmental Protection on January 19, 2023, stating that the 2020 motor vehicle emissions budgets (Budgets) are adequate for transportation conformity purposes.

The transportation conformity rule requires that the EPA conduct a public process and make an affirmative decision on the adequacy of these budgets before they can be used by metropolitan planning organizations in transportation conformity determinations.

As a result of this finding, upon the effective date of this notice of adequacy, the North Jersey Transportation Planning Authority (NJTPA) must use the Budgets in future transportation conformity determinations. The Budgets are associated with the reasonable further progress milestone demonstration.

We announced availability of the plan and related Budgets on the EPA's transportation conformity website on March 8, 2022, requesting comments by April 8, 2022. We received no comments in response to the adequacy review posting.

The Budgets are provided in Table 1.

TABLE 1—MOTOR VEHICLE EMISSIONS BUDGETS FOR NJTPA

[tons per day]

Year	NO_X	VOC
2020	76.77	42.46

Transportation conformity is required by Clean Air Act section 176(c), 42 U.S.C. 7506(c). The EPA's conformity rule requires that long-range transportation plans, transportation improvement programs, and transportation projects conform to a state's air quality SIP and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. *See id.* at section 7506(c)(1)(B).

The criteria the EPA uses to determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).[1] And we have described our process for determining the adequacy of submitted SIP budgets in 40 CFR 93.118(f). Under 40 CFR 93.104(e), within 2 years of the effective date of this notice, NJTPA and the U.S. Department of Transportation will need to demonstrate conformity to the Budgets. To do so, the on-road motor vehicle emissions from implementation of the long-range transportation plan should be projected consistently with the Budgets.

[1] An adequacy review is separate from the EPA's completeness review and should not be used to prejudge the EPA's ultimate action on the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

Authority: 42 U.S.C. 7401–7671q.

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2023–05050 Filed 3–10–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10764–01–OA;–EPA–HQ–OEJECR–2023–0101]

National Environmental Justice Advisory Council; Notification of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification for a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. The meeting is open to the public. For additional information about registering to attend the meeting or to provide public comment, please see Registration under **SUPPLEMENTARY INFORMATION**. Pre-Registration is required.

DATES: The NEJAC will convene a virtual public meeting on Wednesday, March 29, and Thursday, March 30, 2023, from approximately 12:00 p.m. to 6:00 p.m., Eastern Time each day. The meeting discussions will focus on several topics including, but not limited to, workgroup activity, final recommendations for council consideration, and charges created through collaborations with various EPA national program offices. A public comment period relevant to EPA's water infrastructure technical assistance efforts to ensure communities with environmental justice concerns can obtain technical assistance will be considered by the NEJAC during the meeting (see **SUPPLEMENTARY INFORMATION**). Members of the public who wish to participate during the public comment period must register by 11:59 p.m., Eastern Time, March 22, 2023.

FOR FURTHER INFORMATION CONTACT: Paula Flores-Gregg, NEJAC Designated Federal Officer, U.S. EPA; email: *nejac@epa.gov;* telephone: (214) 665–8123. Additional information about the NEJAC is available at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee ''will provide independent advice and recommendations to the Administrator about broad, cross-cutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice.''

I. Registration

Individual registration is required for the public meeting. No two individuals can share the same registration link. Information on how to register is located at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council-meetings.* Registration to attend the meeting is available through the scheduled meeting days. The deadline to sign up to speak during the public comment period will close at 11:59 p.m., Eastern Time, March 22, 2023. When registering, please provide your name, organization, city and state, and email address. Please also indicate whether you would like to provide oral public comment during the meeting, or whether you are submitting written comments.

A. Public Comment

The NEJAC is interested in receiving public comments on EPA's water infrastructure technical assistance efforts to ensure communities with environmental justice concerns (particularly for community water systems, decentralized systems, and/or non-existent infrastructure) can obtain technical assistance to address their environmental, public health, affordability and climate resiliency needs, and reduce longstanding and cumulative negative health impacts. Priority to speak during the meeting will be given to public commenters with comments relevant to water infrastructure technical assistance efforts to communities with environmental justice concerns. More information on NEJAC charges is located online at: *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council-current-charges.* Every effort will be made to hear from as many registered oral public commenters during the time specified on the agenda. Individuals or groups making remarks during the oral public comment period will be limited to three (3) minutes. Please be prepared to briefly describe your comments; including your recommendations on what you want the NEJAC to advise the

EPA to do. Submitting written comments for the record are strongly encouraged. You can submit your written comments in three different ways, (1) by using the webform at *https://www.epa.gov/environmentaljustice/forms/national-environmental-justice-advisory-council-nejac-public-comment,* (2) by sending comments via email to *nejac@epa.gov* and (3) by creating comments in the Docket ID No. EPA–HQ–OEJECR–2023–0101 at *http://www.regulations.gov.* Written comments can be submitted through April 13, 2023.

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Paula Flores-Gregg, at (214) 665–8123 or via email at *nejac@epa.gov.* To request special accommodations for a disability or other assistance, please submit your request at least fourteen (14) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the email or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Matthew Tejada,

Deputy Assistant Administrator for Environmental Justice, Office of Environmental Justice and External Civil Rights.

[FR Doc. 2023–05022 Filed 3–10–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10602–01–R6]

Notice of Proposed Administrative Settlement Agreement and Order on Consent Cashout Settlement for Ability To Pay Peripheral Parties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a proposed CERCLA Section 122(h)(1) Cashout Settlement Agreement for Ability to Pay Peripheral Parties (''Proposed Agreement'') associated with the Vermiculite Products Inc., Superfund Site in Houston, Harris County, Texas (''Site'') was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims under section 107(a) of CERCLA, against Greer Capital Corporation, James H. Greer, James H. Greer Interest Inc., Maxroy Property Company, Toledo Maxroy LL., and Vermiculite Products Inc., (''Settling Parties'') for EPA response costs at the Vermiculite Products Inc., Superfund Site located in Houston, Texas. The settlement is estimated to be $8,703,300 and was based on an Ability to Pay Analysis, which concluded the settling party shall make payment for EPA response costs.

For thirty (30) days following the date of publication of this notice, EPA will receive electronic comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection by request. Please see the **ADDRESSES** section of this notice for special instructions in effect due to impacts related to the COVID–19 pandemic.

DATES: Comments must be received on or before April 12, 2023.

ADDRESSES: As a result of impacts related to the COVID–19 pandemic, requests for documents and submission of comments must be via electronic mail except as provided below. The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection upon request by contacting EPA Assistant Regional Counsel Daniel Jaynes at *Jaynes.daniel@epa.gov.* Comments must be submitted via electronic mail to this same email address and should reference the ''Vermiculite Products Inc.'' Superfund Site, Proposed Settlement Agreement'' and ''EPA CERCLA Docket No. 06–02–21''. Persons without access to electronic mail may call Mr. Jaynes at (214) 665–2162 to make alternative arrangements.

FOR FURTHER INFORMATION CONTACT: Daniel Jaynes at EPA by phone (214) 665–2162 or email at: *Jaynes.daniel@epa.gov.*

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–05086 Filed 3–10–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10767–01–OW]

National Drinking Water Advisory Council: Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of qualified candidates to be considered for three-year appointments to the National Drinking Water Advisory Council (NDWAC or Council). The 15-member Council was established by the Safe Drinking Water Act (SDWA) to provide independent advice, consultation, and recommendations to the EPA Administrator on matters relating to activities, functions, policies, and regulations under the SDWA. This notice solicits nominations to fill anticipated vacancies in 2023 with three-year appointments from December 2023 through December 2026. EPA may also consider nominations received through this solicitation to fill anticipated vacancies in 2024 and in the event of unanticipated vacancies on the Council. To enable EPA to maintain the membership required by statute, the Agency is seeking nominees who are from the general public; appropriate state and local agencies concerned with water hygiene and public water supply; and representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply, including nominees associated with small, rural public water systems.

DATES: Nominations should be submitted in time to arrive no later than April 12, 2023.

ADDRESSES: Nominations should be sent to *NDWAC@epa.gov.* If you have concerns about submitting your nomination electronically, you may contact Elizabeth Corr, the Designated Federal Officer (DFO) for the NDWAC, by email at *NDWAC@epa.gov,* or by phone at (202) 564–3798, to discuss an alternative delivery method.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the nomination process may contact Elizabeth Corr at *NDWAC@epa.gov*; or call (202) 564–3798. General information concerning the NDWAC can be found on EPA's website at *https://www.epa.gov/ndwac.*

SUPPLEMENTARY INFORMATION:

National Drinking Water Advisory Council: The Council was created by Congress on December 16, 1974, as part of the Safe Drinking Water Act of 1974, Public Law 93–523, 42 U.S.C. 300j–5, and is operated in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. 10. The Council consists of 15 members, including the chairperson, all of whom are appointed by the EPA Administrator. Five members are from the general public; five are from appropriate state and local agencies concerned with water hygiene and public water supply; and five are from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply, of which two such members shall be associated with small, rural public water systems. The current list of members is available on EPA's NDWAC website at *https://www.epa.gov/ndwac* under ''NDWAC roster.''

The Council will meet once each year and may hold additional meetings during the year. Meetings are typically one to two days and may be in person or virtual. Members also may be asked to participate in ad hoc working groups to develop policy recommendations, advice letters, and reports that address specific program issues for the Council's consideration.

Member Nominations: Any interested person or organization may nominate qualified individuals to be considered for appointment to the NDWAC. Interested individuals may self-nominate. In accordance with Executive Order 14035 (June 25, 2021) and consistent with law, EPA values and welcomes opportunities to increase diversity, equity, inclusion, and accessibility on its federal advisory committees. EPA's federal advisory committees strive to have a workforce that reflects the diversity of the American people.

All nominations will be fully considered, but nominees need to be aware of the specific membership requirements of the SDWA: Five members from the general public; five members from state and local agencies concerned with water hygiene and public water supply; and five members from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply, of which two such members shall be associated with small, rural public water systems. EPA anticipates vacancies over the course of 2023 and 2024 in all of these categories. This notice solicits nominations to fill anticipated vacancies in 2023, including for three new members of whom two will be from the general public and one will be from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. EPA may also consider nominations received through this solicitation to fill anticipated vacancies in 2024, including for two new members of whom one will be from state and local agencies concerned with water hygiene and public water supply and one will be from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply associated with small, rural public water systems. EPA may also consider nominations received through this solicitation in the event of unanticipated vacancies on the Council, which may occur in any category. Other criteria used to evaluate nominees will include:

- Demonstrated experience with drinking water issues at the national, state, or local level, which can include experience with drinking water regulations, funding programs, infrastructure operations, and cross-cutting issues such as environmental justice, climate resiliency, capacity development, and public health emergencies as relates to drinking water;
- Demonstrated ability to work constructively on committees and/or in consensus-building processes;
- Availability and willingness to serve a three-year term as an active and contributing member; and
- Background and experience that would help members contribute to the diversity of expertise on the Council—*e.g.,* geographic, economic, social, cultural, educational backgrounds, professional affiliations, and other considerations.

Nominations must include (1) a resume or curriculum vitae, (2) a brief statement (one page or less) describing the nominee's interest in serving on the Council and addressing the criteria previously described, and (3) a short biography describing the qualifications of the nominee. Nominations should include the nominee's name, current business address or other mailing address, email address, and daytime telephone number. The DFO will use the email address provided for the nominee to acknowledge receipt of the nomination. If an email address is not available, the nomination should identify the nominee's preferred alternative means of contact.

NDWAC members receive travel and per diem allowances, where appropriate and in accordance with Federal travel regulations, and receive compensation (if appropriate) for travel and while attending meetings. All NDWAC members serve as Special Government Employees (SGEs). Candidates invited to serve on the NDWAC will be asked to submit the ''Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees'' (EPA Form 3110–48). This confidential form provides information to EPA's ethics officials, to determine whether there is a statutory conflict between a person's public responsibilities as an SGE member and private interests and activities, or the appearance of a loss of impartiality, as defined by federal laws and regulations. The form may be viewed at the link under ''Ethics requirements'' on EPA's NDWAC website at *https://www.epa.gov/ndwac. This form should not be submitted as part of a nomination.*

Other sources, in addition to this **Federal Register** announcement, may also be utilized in the solicitation of nominees. To help EPA evaluate the effectiveness of its outreach efforts, please tell us how you learned of this opportunity.

Jennifer L. McLain,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2023–05109 Filed 3–10–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10765–01–OA]

Public Meeting of the Science Advisory Board Environmental Justice Screen (EJScreen) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Science Advisory Board Environmental Justice Screen (EJScreen) Review Panel. The purpose of the meeting is to receive a demonstration of the updated EPA's EJScreen mapping and screening tool from EPA's Office of Environmental Justice and External Civil Rights, review and discuss the charge questions. The panel will schedule a future public meeting in late Spring 2023 to peer review the EJScreen methodology and updated calculations

for the EJ indexes released publicly in October 2022, as well as other aspects of the calculations. Additional information, materials, background, and meeting agendas for future activities will be posted on SAB's website at: *https://sab.epa.gov.*

DATES: The virtual public meeting of the SAB EJScreen Review Panel will be held on March 31, 2023, from 1 p.m. to 5 p.m. Eastern Standard time.

ADDRESSES: The meeting will be conducted virtually. Please refer to the SAB website at *https://sab.epa.gov* for details on how to access the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Zaida Figueroa, Designated Federal Officer (DFO), via telephone (202) 566–2643, or email at *figueroa.zaida@epa.gov.* General information about the SAB, as well as any updates concerning the meetings announced in this notice can be found on the SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Science Advisory Board EJScreen Review Panel will hold a public meeting to receive a demonstration of the updated EJScreen mapping and screening tool, review and discuss the charge questions.

Availability of Meeting Materials: Prior to the meeting, the agenda and other materials will be accessible on the SAB website under the meeting date (which may be found under Meetings and Events). Information on the EJScreen mapping and screening tool and charge questions associated with this review will also be posted at this site.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments.

Oral Statements: In general, individuals or groups requesting an oral presentation at a meeting conducted by video will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted above by March 24, 2023, to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by March 24, 2023, for consideration at the March 31, 2023, meeting. Written statements should be supplied to the DFO at the contact information above. It is the SAB Staff Office general policy to post written comments on the web page for the meeting. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Zaida Figueroa, at (202) 566–2643 or *figueroa.zaida@epa.gov,* preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

V. Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2023–05024 Filed 3–10–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0053, OMB 3060–0532, 3060–0997; FR ID 130181]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 12, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0053.

Title: Experimental Authorization Applications—FCC Form 702, Consent to Assign an Experimental Authorization; and FCC Form 703, Consent to Transfer Control of Corporation Holding Station License.

Form Nos.: FCC Form 702 and 703.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents and Responses: 40 respondents; 40 responses.

Estimated Time per Response: 0.6 hours (36 minutes).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154, 302 and 303.

Total Annual Burden: 24 hours.

Total Annual Cost: $5,600.

Needs and Uses: This information collection will be submitted as an extension (no change in reporting requirement) after this 60-day comment period to the Office of Management and Budget (OMB) to obtain the three year clearance from them.

OMB Control No.: 3060–0532.

Title: Section 2.1033 and 15.121, Scanning Receiver Compliance Exhibits.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 25 respondents; 25 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: One-time reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304 and 307.

Total Annual Burden: 25 hours.

Total Annual Cost: $1,250.

Needs and Uses: This collection will be submitted as an extension after this 60-day comment period to Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

The FCC rules under 47 CFR 2.1033 and 15.121 require manufacturers of scanning receivers to design their equipment so that it has 38 dB of image rejection for Cellular Service frequencies, tuning, control and filtering circuitry are inaccessible and any attempt to modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. The Commission's rules also require manufacturers to submit information with any application for certification that describes the testing method used to determine compliance with the 38 dB image rejection ratio, the design features that prevent modification of the scanning receiver to receive Cellular Service transmissions, and the design steps taken to make tuning, control, and filtering circuitry inaccessible. Furthermore, the FCC requires equipment to carry a statement assessing the vulnerability of the scanning receiver to modification and to have a label affixed to the scanning receiver, similar to the following as described in section 15.121:

Warning: Modification of this device to receive cellular radiotelephone service signals is prohibited under FCC Rules and Federal Law.

The Commission uses the information required in this equipment authorization process to determine whether the equipment that is being marketed complies with the Congressional mandate in the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA) and applicable Commission rules.

OMB Control No.: 3060–0997.

Title: Section 52.15(k), Numbering Utilization and Compliance Audit.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 10 respondents; 10 responses.

Estimated Time per Response: 33 hours.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 251.

Total Annual Burden: 330 hours.

Total Annual Cost: No cost.

Needs and Uses: The audit program, consisting of audit procedures and guidelines, is developed to conduct random audits. The random audits are conducted on the carriers that use numbering resources in order to verify the accuracy of numbering data reported on FCC Form 502, and to monitor compliance with FCC rules, orders and applicable industry guidelines. Failure of the audited carriers to respond to the audits can result in penalties. Based on the final audit report, evidence of potential violations may result in enforcement action.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–05025 Filed 3–10–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0565; FR ID 130256]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the

PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 12, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0565.

Title: Section 76.944, Commission Review of Franchising Authority Decisions on Rates for the Basic Service Tier and Associated Equipment.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or Tribal government.

Number of Respondents and Responses: 32 respondents; 32 responses.

Estimated Time per Response: 2–30 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 623 of the Communications Act of 1934, as amended.

Total Annual Burden: 816 hours.

Total Annual Costs: $4,800.

Needs and Uses: The information collection requirements contained in 47 CFR 76.944(b) provide that any participant at the franchising authority level in a ratemaking proceeding may file an appeal of the franchising authority's decision with the Commission within 30 days of release of the text of the franchising authority's decision as computed under § 1.4(b) of this chapter. Appeals shall be served on the franchising authority or other authority that issued the rate decision. Where the state is the appropriate decision-making authority, the state shall forward a copy of the appeal to the appropriate local official(s). Oppositions may be filed within 15 days after the appeal is filed, and must be served on the parties appealing the rate decision. Replies may be filed seven (7) days after the last day for oppositions and shall be served on the parties to the proceeding.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–05026 Filed 3–10–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1240; FR ID 130384]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 12, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1240.

Title: FCC Form 2100, Application for Media Bureau Video Service Authorization, Schedule 387 (Transition Progress Report).

Form Number: FCC Form 2100, Schedule 387 (Transition Progress Report Form).

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 1,000 respondents; 3,333 responses.

Estimated Time per Response: 2 hours (1 hour to complete the form, 1 hour to respond to technical questions).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 6,666 hours.

Total Annual Costs: No costs.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act).

Needs and Uses: By Public Notice released January 10, 2017, The Incentive Auction Task Force and Media Bureau Release Transition Progress Report Form and Filing Requirements for Stations Eligible for Reimbursement from the TV Broadcast Relocation Fund and Seek Comment on the Filing of the Report by Non-Reimbursable Stations, MB Docket No. 16–306, Public Notice, 32 FCC Rcd 256 (IATF/Med. Bur. 2017). The Incentive Auction Task Force and Media Bureau described the information that must be provided in the adopted FCC Form 2100, Schedule 387 (Transition Progress Report Form) to be filed by Reimbursable Stations and when and how the Transition Progress Reports must be filed. We also proposed to require broadcast television stations that are not eligible to receive reimbursement of associated expenses from the Reimbursement Fund (Non-Reimbursable Stations), but must transition to new channels as part of the Commission's channel reassignment plan, to file progress reports in the same manner and on the same schedule as Reimbursable Stations, and sought comment on that proposal. By Public Notice released May 18, 2017. The Incentive Auction Task Force and Media Bureau Adopt Filing Requirements for the Transition

Progress Report Form by Stations That Are Not Eligible for Reimbursement from the TV Broadcast Relocation Fund, MB Docket No. 16–306, Public Notice, DA 17–484 (rel. May 18, 2017) (referred to collectively with Public Notice cited above as Transition Progress Report Public Notices). We concluded that Non-Reimbursable Stations will be required to file Transition Progress Reports following the filing procedures adopted for Reimbursable Stations.

The Commission is seeking a three-year extension for this information collection from the Office of Management and Budget (OMB) approval for FCC Form 2100, Schedule 387 (Transition Progress Report).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–05046 Filed 3–10–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0906; FR ID 130257]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 12, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0906.

Title: Annual DTV Ancillary/Supplemental Services Report for DTV Stations, FCC Form 2100, Schedule G; 47 CFR 73.624(g).

Form Number: FCC Form 2100, Schedule G (formerly FCC Form 317).

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 7,175 respondents, 14,350 responses.

Frequency of Response: Recordkeeping requirement, annual reporting requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in sections 154(i), 303, 336 and 403 of the Communications Act of 1934, as amended.

Estimated Time per Response: 2–4 hours.

Total Annual Burden: 43,050 hours.

Total Annual Cost: $1,076,100.

Needs and Uses: Each licensee/permittee of a digital television (DTV) station that provides feeable ancillary or supplementary services during the relevant reporting period must file on an annual basis FCC Form 2100, Schedule G. Specifically, required filers include the following (but we generally refer to all such entities herein as a ''DTV licensee/permittee''): A licensee of a digital commercial or noncommercial educational (NCE) full power television (TV) station, low power television (LPTV) station, TV translator or Class A TV station. A permittee operating pursuant to digital special temporary authority (STA) of a commercial or NCE full power TV station, LPTV station, TV translator or Class A TV station.

Each DTV licensee/permittee must report the feeable ancillary or supplementary services provided at any time during the reporting cycle. Specifically, a DTV licensee/permittee must include the following in its annual report: a brief description of the feeable ancillary or supplementary services provided; the gross revenues received from such services during the applicable period and the amount of bitstream used to provide such services during the applicable period.

Concurrent with the submission of FCC Form 2100, Schedule G, each DTV licensee/permittee is required to remit a payment to the Commission, via FCC Form 159 (*see* OMB Control No. 3060–0589), in the amount of five percent of the gross revenues derived from the provision of its ancillary or supplementary services.

Each DTV licensee/permittee is required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. Each NCE licensee/permittee must also retain for eight years documentation sufficient to show that its entire bitstream was used ''primarily'' for NCE broadcast services on a weekly basis.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–05027 Filed 3–10–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0548; FR ID 130398]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed

information collection should be submitted on or before April 12, 2023.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0548.

Title: Sections 76.1709 and 76.1620, Availability of Signals; Section 76.1614, Identification of Must-Carry Signals.

Type of Review: Extension without change of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 4,103 respondents; 49,236 responses.

Estimated Time per Response: 0.5–1.0 hour.

Frequency of Response: Recordkeeping requirement, Third party disclosure requirement, On occasion reporting requirement.

Obligation to Respond: Voluntary.

Total Annual Burden: 24,618 hours.

Total Annual Cost: No cost.

Needs and Uses: 47 CFR 76.1709(a) states that the operator of every cable television system shall maintain for public inspection a file containing a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements. Such list shall include the call sign; community of license, broadcast channel number, cable channel number, and in the case of a noncommercial educational broadcast station, whether that station was carried by the cable system on March 29, 1990. 47 CFR 76.1614 and 47 CFR 76.1709(c) each state that a cable operator shall respond in writing within 30 days to any written request by any person for the identification of the signals carried on its system in fulfillment of the must-carry requirements. In addition, 47 CFR 76.1614 states that the required written response may be delivered by email, if the consumer used email to make the request or complaint directly to the cable operator, or if the consumer specifies email as the preferred delivery method in the request or complaint.

47 CFR 76.1620, pursuant to 47 U.S.C. 614(b)(7), states that if a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers. Such notification must be provided by June 2, 1993, and annually thereafter and to each new subscriber upon initial installation. The notice, which may be included in routine billing statements, shall identify the signals that are unavailable without an additional connection, the manner for obtaining such additional connection and instructions for installation. 47 CFR 76.1600(a) provides that written information provided by cable operators to subscribers or customers pursuant to § 76.1620 may be delivered electronically by email to any subscriber who has not opted out of electronic delivery if the entity: (1) Sends the notice to the subscriber's or customer's verified email address; (2) Provides either the entirety of the written information or a weblink to the written information in the notice; and (3) Includes, in the body of the notice, a telephone number that is clearly and prominently presented to subscribers so that it is readily identifiable as an opt-out mechanism that will allow subscribers to continue to receive paper copies of the written material.

Note: These recordkeeping and notification requirements ensure that subscribers are aware of the broadcast stations carried in compliance with the Commission's cable must-carry rules, see 47 CFR 76.56.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–05048 Filed 3–10–23; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MA–2023–01; Docket No. 2023–0002; Sequence No. 1]

Revision to Foreign Gift Minimal Value

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of GSA Bulletin FMR B–52, Foreign Gift and Decoration Minimal Value.

SUMMARY: GSA, in consultation with the U.S. Department of State, must redefine the minimal value of foreign gift items to reflect changes in the Consumer Price

Index (CPI) for the preceding 3-year period, as specified under the law concerning the Receipt and Disposition of Foreign Gifts and Decorations. The minimal value was last defined effective January 1, 2020, and must be redefined effective as of January 1, 2023. This bulletin cancels FMR Bulletin B–50, ''Foreign Gift and Decoration Minimal Value,'' issued March 10, 2020, as this bulletin provides updated information on the same topic.

DATES: *Applicability Date:* January 1, 2023.

This notice applies to foreign gifts and decorations received on or after January 1, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. William Garrett, Director, Personal Property Policy, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–368–8163, or by email at *william.garrett@gsa.gov.* Please cite Notice of GSA Bulletin FMR B–52.

SUPPLEMENTARY INFORMATION:

Background

Foreign gifts and decorations above the GSA-defined minimal value are handled differently than lesser-valued foreign gifts and decorations under the provisions of 5 U.S.C. 7342 and FMR 102–42.

Foreign gifts and decorations above the minimal value become the property of the Federal Government and must be reported to GSA for disposal if not immediately needed by the agency for official purposes. Additionally, those items initially retained by the agencies for official use are reported to GSA upon termination of official use.

The foreign gifts and decorations minimal value was last redefined effective January 1, 2020, at $415, and therefore, must be redefined as of January 1, 2023, to reflect the CPI increase of 15.33 percent for the preceding three years.

Pursuant to FMR 102–42.10, the approved revised minimal value will be published in an FMR Bulletin posted on OGP's website (*www.gsa.gov/foreigngifts*).

Calculations using the consumer prices over the past three years show that the minimal value must increase 15.33 percent from its current $415, which yields an amount of $478.62. As in previous years, GSA is rounding the amount to the nearest five dollar increments.

Therefore, GSA is adjusting the new minimal value to $480.00. Per FMR 102–42.10, an agency may, by regulation, specify a lower value than this Government-wide value for its agency employees.

FMR Bulletin 52 is available at *https://www.gsa.gov/policy-regulations/regulations/federal-management-regulation/federal-management-regulation-fmr-related-files#PersonalPropertyManagement.*

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2023–05093 Filed 3–10–23; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0577]

Authorization of Emergency Use of a Drug Product During the COVID–19 Pandemic; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) under the Federal Food, Drug, and Cosmetic Act (FD&C Act) for use during the COVID–19 pandemic. FDA has issued one Authorization for the drug product KINERET (anakinra) as requested by Swedish Orphan Biovitrum AB (Sobi). The Authorization contains, among other things, conditions on the emergency use of the authorized product. The Authorization follows the February 4, 2020, determination by the Secretary of Health and Human Services (HHS) that there is a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves a novel (new) coronavirus. The virus, now named SARS–CoV–2, causes the illness COVID–19. On the basis of such determination, the Secretary of HHS declared on March 27, 2020, that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID–19 pandemic, pursuant to the FD&C Act, subject to the terms of any authorization issued under that section. The Authorization, which includes an explanation of the reasons for issuance, is reprinted in this document.

DATES: The Authorization is effective as of November 8, 2022.

ADDRESSES: Submit written requests for a single copy of the EUA to the Office of Executive Programs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, 6th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Johanna McLatchy, Office of Executive Programs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, 6th Floor, Silver Spring, MD 20993–0002, 301–796–3200 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help ensure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, nuclear, or radiological agents when there are no adequate, approved, and available alternatives (among other criteria).

II. Criteria for EUA Authorization

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50, U.S. Code, of attack with (A) a biological, chemical, radiological, or nuclear agent or agents; or (B) an agent or agents that may cause, or are otherwise associated

with, an imminently life-threatening and specific risk to U.S. military forces; [1] (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Under section 564(h)(1) of the FD&C Act, revisions to an authorization shall be made available on the internet website of FDA. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use in an actual or potential emergency when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b, and 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA [2] concludes: (1) that an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) the product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii) of the FD&C Act, that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act.

III. The Authorization

The Authorization follows the February 4, 2020, determination by the Secretary of HHS that there is a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves a novel (new) coronavirus. The virus, now named SARS–CoV–2, causes the illness COVID–19. Notice of the Secretary's determination was provided in the **Federal Register** on February 7, 2020 (85 FR 7316). On the basis of such determination, the Secretary of HHS declared on March 27, 2020, that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID–19 pandemic, pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section. Notice of the Secretary's declaration was provided in the **Federal Register** on April 1, 2020 (85 FR 18250). Having concluded that the criteria for issuance of the Authorization under section 564(c) of the FD&C Act are met, FDA has issued the authorization for the emergency use of a drug product during the COVID–19 pandemic. On November 8, 2022, FDA issued an EUA to Sobi for the drug product anakinra, subject to the terms of the Authorization. The initial Authorization, which is included below in its entirety after section IV of this document (not including the authorized versions of the fact sheets and other written materials), provides an explanation of the reasons for issuance, as required by section 564(h)(1) of the FD&C Act. Any subsequent reissuance of the Authorization can be found on FDA's web page at: *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

IV. Electronic Access

An electronic version of this document and the full text of the Authorization is available on the internet at: *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

BILLING CODE 4164–01–P

[1] In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

[2] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

November 8, 2022

Swedish Orphan Biovitrum AB
c/o Advyzom LLC
Rula Ibrahim-Saker, PharmD
U.S. Agent
335 Snyder Ave.
Berkeley Heights, NJ 07922

RE: Emergency Use Authorization 109

Dear Dr. Ibrahim-Saker:

This letter is in response to Swedish Orphan Biovitrum AB's (Sobi) request that the Food and Drug Administration (FDA or Agency) issue an Emergency Use Authorization (EUA) for the emergency use of Kineret (anakinra) for the treatment of coronavirus disease 2019 (COVID-19) in certain hospitalized patients, pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. §360bbb-3).

On February 4, 2020, pursuant to Section 564(b)(1)(C) of the Act, the Secretary of the Department of Health and Human Services (HHS) determined that there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad, and that involves the virus that causes coronavirus disease 2019 (COVID-19).[1] On the basis of such determination, the Secretary of HHS on March 27, 2020, declared that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID-19 pandemic, pursuant to Section 564 of the Act (21 U.S.C. 360bbb-3), subject to terms of any authorization issued under that section.[2]

Kineret is an Interleukin-1 (IL-1) receptor antagonist. IL-1 is involved in inflammatory diseases and additionally, IL-1 is linked to acute severe lung inflammation in COVID-19. Kineret is FDA-approved for several indications[3]; however, Kineret is not approved for the treatment of COVID-19.

Based on the totality of scientific evidence available to FDA, including data from the clinical trial SAVE-MORE (NCT04680949): a randomized, double-blind, placebo-controlled study to

[1] U.S. Department of Health and Human Services, *Determination of a Public Health Emergency and Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3.* February 4, 2020.
[2] U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3*, 85 FR 18250 (April 1, 2020).
[3] The FDA-approved labeling for Kineret (anakinra) may be found at: https://www.accessdata.fda.gov/drugsatfda_docs/label/2020/103950s5189lbl.pdf

evaluate the safety and efficacy of Kineret in adult (≥18 years) patients with COVID-19 pneumonia who were at risk of developing severe respiratory failure, it is reasonable to believe that Kineret may be effective for the treatment of COVID-19 in hospitalized adults with positive results of direct SARS-CoV-2 viral testing with pneumonia requiring supplemental oxygen (low- or high-flow oxygen) who are at risk of progressing to severe respiratory failure and likely to have an elevated plasma soluble urokinase plasminogen activator receptor (suPAR), as described in the Scope of Authorization (Section II), and when used under the conditions described in this authorization, the known and potential benefits of Kineret outweigh the known and potential risks of such product.

Having concluded that the criteria for issuance of this authorization under Section 564(c) of the Act are met, I am authorizing the emergency use of Kineret for the treatment COVID-19 in certain hospitalized adults, as described in the Scope of Authorization section of this letter (Section II) and subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of Kineret for the treatment of COVID-19, when administered as described in the Scope of Authorization (Section II), meets the criteria for issuance of an authorization under Section 564(c) of the Act, because:

1. SARS-CoV-2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that Kineret may be effective for the treatment of COVID-19 in hospitalized adults with positive results of direct SARS-CoV-2 viral testing with pneumonia requiring supplemental oxygen (low- or high-flow oxygen) who are at risk of progressing to severe respiratory failure and likely to have an elevated suPAR, as described in the Scope of Authorization (Section II), and that, when used under the conditions described in this authorization, the known and potential benefits of Kineret outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of Kineret for the treatment of COVID-19 in hospitalized adults with positive results of direct SARS-CoV-2 viral testing with pneumonia requiring supplemental oxygen (low- or high-flow oxygen) who are at risk of progressing to severe respiratory failure and likely to have an elevated suPAR.[4,5]

[4] No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the Act.

[5] Veklury (remdesivir), a SARS-CoV-2 nucleotide analog RNA polymerase inhibitor, is an FDA-approved alternative for the treatment of COVID-19 in hospitalized adults with pneumonia requiring supplemental oxygen (low- or high-flow oxygen) who are at risk of progressing to severe respiratory failure. Veklury has demonstrated antiviral activity against SARS-CoV-2; whereas Kineret is an IL-1 receptor antagonist that blocks the IL-1 signaling pathway, which is involved in inflammatory diseases and thought to contribute to inflammation and worsening of COVID-19, offering a different mechanism of action. Olumiant (baricitinib), a Janus kinase (JAK) inhibitor, is an FDA-approved alternative for the treatment of COVID-19 in hospitalized adults with pneumonia requiring

II. Scope of Authorization

I have concluded, pursuant to Section 564(d)(1) of the Act, that the scope of this authorization is limited as follows:

- Kineret may only be used by healthcare providers to treat COVID-19 in hospitalized adults with positive results of direct SARS-CoV-2 viral testing with pneumonia requiring supplemental oxygen (low- or high-flow oxygen) who are at risk for progressing to severe respiratory failure and are likely to have an elevated suPAR.[6]

- The use of Kineret covered by this authorization must be in accordance with the authorized Fact Sheets.

Product Description

The authorized Kineret is supplied in a single-use preservative free, prefilled glass syringe with a 29-gauge needle. Each prefilled glass syringe contains 100 mg of Kineret per 0.67 mL. Kineret is distributed in a 1 x 7 syringe dispensing pack containing 7 syringes (NDC 66658-234-07). Kineret is to be administered by subcutaneous injection.

The authorized storage and handling information for Kineret is included in the authorized Fact Sheet for Healthcare Providers.

Kineret is authorized for emergency use with the following product-specific information required to be made available to healthcare providers and to patients and caregivers, respectively, through Sobi's website at www.KineretRxHCP.com/EUA (referred to as the "authorized labeling"):

- Fact Sheet for Healthcare Providers: Emergency Use Authorization (EUA) for Kineret
- Fact Sheet for Patients and Caregivers: Emergency Use Authorization (EUA) of Kineret for Coronavirus Disease 2019 (COVID-19)

I have concluded, pursuant to Section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of Kineret, when used for the treatment of COVID-19 and used in accordance with this Scope of Authorization (Section II), outweigh the known and potential risks.

I have concluded, pursuant to Section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that Kineret may be effective for the

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supplemental oxygen and non-invasive ventilation. Kineret offers an alternative mechanism of action as an IL-1 receptor antagonist. IL-1 is another component of the complex hyperinflammatory response thought to contribute to worsening of COVID-19. In addition, Kineret has a subcutaneous route of administration; whereas, Olumiant is available as tablets, offering an alternative route of administration to some patients who are hospitalized (e.g. for patients who are unable to swallow tablets).

[6] See Section 1.1 of the authorized Fact Sheet for Healthcare Providers for criteria to identify patients who are at risk of progressing to severe respiratory failure and likely to have an elevated suPAR.

treatment of COVID-19 when used in accordance with this Scope of Authorization (Section II), pursuant to Section 564(c)(2)(A) of the Act.

Having reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, I have concluded that Kineret (as described in this Scope of Authorization (Section II)) meets the criteria set forth in Section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of Kineret under this EUA must be consistent with, and may not exceed, the terms of the Authorization, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section III). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of HHS's determination under Section 564(b)(1)(C) described above and the Secretary of HHS's corresponding declaration under Section 564(b)(1), Kineret is authorized for the treatment of COVID-19 in hospitalized adults with positive results of direct SARS-CoV-2 viral testing with pneumonia requiring supplemental oxygen (low- or high-flow oxygen) who are at risk for progressing to severe respiratory failure and are likely to have an elevated suPAR, as described in the Scope of Authorization (Section II) under this EUA, despite the fact that it does not meet certain requirements otherwise required by applicable federal law.

III. Conditions of Authorization

Pursuant to Section 564 of the Act, I am establishing the following conditions on this authorization:

Sobi and Authorized Distributors[7]

A. Sobi and authorized distributor(s) will ensure that Kineret is distributed and the authorized labeling (i.e., Fact Sheets) will be made available to healthcare facilities and/or healthcare providers as described in Section II of this Letter of Authorization.

B. Sobi and authorized distributor(s) will ensure that appropriate storage is maintained until the product is delivered to healthcare facilities and/or healthcare providers.

C. Sobi and authorized distributor(s) will ensure that the terms of this EUA are made available to all relevant stakeholders (e.g., U.S. government agencies, state and local government authorities, authorized distributors, healthcare facilities, healthcare providers) involved in distributing or receiving Kineret. Sobi will provide to all relevant stakeholders a copy of this Letter of Authorization and communicate any subsequent amendments that might be made to this Letter of Authorization and its authorized accompanying materials (i.e., Fact Sheets).

D. Sobi may request changes to this authorization, including to the authorized Fact Sheets for Kineret. Any request for changes to this EUA must be submitted to the Office of

[7] "Authorized Distributor(s)" are identified by Sobi as an entity or entities allowed to distribute the authorized Kineret.

Immunology and Inflammation/Office of New Drugs/Center for Drug Evaluation and Research. Such changes require appropriate authorization prior to implementation.[8]

E. Sobi may develop and disseminate instructional and educational materials (e.g., materials providing information on product administration and/or patient monitoring) that are consistent with the authorized emergency use of Kineret as described in this Letter of Authorization and authorized labeling, without FDA's review and concurrence, when necessary to meet public health needs. Any instructional and educational materials that are inconsistent with the authorized labeling for Kineret are prohibited. If the Agency notifies Sobi that any instructional and educational materials are inconsistent with the authorized labeling, Sobi must cease distribution of such instructional and educational materials. Furthermore, as part of its notification, the Agency may also require Sobi to issue corrective communication(s).

F. Sobi will report to FDA all serious adverse events and medication errors potentially related to Kineret use that are reported to Sobi using either of the following options.

Option 1: Submit reports through the Safety Reporting Portal (SRP) as described on the FDA SRP web page.

Option 2: Submit reports directly through the Electronic Submissions Gateway (ESG) as described on the FAERS electronic submissions web page.

Submitted reports under both options must state: "Kineret use for COVID-19 under Emergency Use Authorization (EUA)." For reports submitted under Option 1, include this language at the beginning of the question "Describe Event" for further analysis. For reports submitted under Option 2, include this language at the beginning of the "Case Narrative" field.

G. All manufacturing, packaging, and testing sites for both drug substance and drug product used for EUA supply will comply with current good manufacturing practice requirements of Section 501(a)(2)(B) of the Act.

H. Sobi will submit information to the Agency within three working days of receipt of any information concerning significant quality problems with drug product distributed under this EUA for Kineret that includes the following:

[8] The following types of revisions may be authorized without reissuing this letter: (1) changes to the authorized labeling; (2) non-substantive editorial corrections to this letter; (3) new types of authorized labeling, including new fact sheets; (4) new carton/container labels; (5) expiration dating extensions; (6) changes to manufacturing processes, including tests or other authorized components of manufacturing; (7) new conditions of authorization to require data collection or study; (8) new strengths of the authorized product, new product sources (e.g., of active pharmaceutical ingredient) or of product components. For changes to the authorization, including the authorized labeling, of the type listed in (3), (6), (7), or (8), review and concurrence is required from the Counter-Terrorism and Emergency Coordination Staff/Office of the Center Director/CDER and the Office of Counterterrorism and Emerging Threats/Office of the Chief Scientist.

- Information concerning any incident that causes the drug product or its labeling to be mistaken for, or applied to, another article; or
- Information concerning any microbiological contamination, or any significant chemical, physical, or other change or deterioration in the distributed drug product, or any failure of one or more distributed batches of the product to meet the established specifications.

If a significant quality problem affects unreleased product and may also impact product(s) previously released and distributed, then information must be submitted for all potentially impacted lots.

Sobi will include in its notification to the Agency whether the batch, or batches, in question will be recalled.

If not included in its initial notification, Sobi must submit information confirming that Sobi has identified the root cause of the significant quality problems, taken corrective action, and provide a justification confirming that the corrective action is appropriate and effective. Sobi must submit this information as soon as possible but no later than 45 calendar days from the initial notification.

I. Sobi will manufacture Kineret to meet all quality standards and per the manufacturing process and control strategy as detailed in Sobi's EUA request. Sobi will not implement any changes to the description of the product, manufacturing process, facilities and equipment, and elements of the associated control strategy that assure process performance and quality of the authorized product, without notification to and concurrence by the Agency as described under Condition D.

J. Through a process of inventory control, Sobi and authorized distributor(s) will maintain records regarding distribution of Kineret (i.e., lot numbers, quantity, receiving site, receipt date).

K. Sobi must provide the following information to the Agency:

1. Sobi will provide the necessary data and/or information validating the use of the alternative patient identification method to suPAR[9] at baseline in patients with positive direct SARS-CoV-2 viral testing, who are hospitalized, requiring oxygen, with evidence of COVID-19 pneumonia. Sobi will pre-specify the analyses to examine the correlation, sensitivity, specificity, positive predictive value, and negative predictive value, between suPAR and the alternative patient identification method. Sobi must submit a data analysis plan no later than January 31, 2023. Sobi must submit a final analysis report no later than May 31, 2023.
2. Sobi will provide the data and/or information necessary to support the submission of a marketing application under the appropriate regulatory pathway, as determined by the Center for Devices and Radiological Health

[9] Supra at Note 6.

(CDRH), for a suPAR test for commercial use in the United States. Sobi has agreed to submit a marketing application to CDRH no later than January 31, 2025.

L. Sobi and authorized distributor(s) will make available to FDA upon request any records maintained in connection with this EUA.

Healthcare Facilities to Whom Kineret Is Distributed and Healthcare Providers Administering Kineret

M. Healthcare facilities and healthcare providers will ensure that they are aware of the Letter of Authorization, and the terms herein, and that the authorized Fact Sheets are made available to healthcare providers and to patients and caregivers, respectively, through appropriate means, prior to administration of Kineret as described in the Scope of Authorization (Section II) under this EUA.

N. Healthcare facilities and healthcare providers receiving Kineret will track all serious adverse events and medication errors that are considered to be potentially related to Kineret use and must report these to FDA in accordance with the Fact Sheet for Healthcare Providers. Complete and submit a MedWatch form (www.fda.gov/medwatch/report.htm), or complete and submit FDA Form 3500 (health professional) by fax (1-800-FDA-0178) (these forms can be found via link above). Call 1-800-FDA-1088 for questions. Submitted reports must state, "Kineret use for COVID-19 under Emergency Use Authorization" at the beginning of the question "Describe Event" for further analysis. A copy of the completed FDA Form 3500 must also be provided to Sobi per the instructions in the authorized labeling.

O. Healthcare facilities and healthcare providers will ensure that appropriate storage is maintained until the product is administered consistent with the terms of this letter and the authorized labeling.

P. Through a process of inventory control, healthcare facilities will maintain records regarding the dispensing and administration of Kineret for the use authorized in this letter (i.e., lot numbers, quantity, receiving site, receipt date), product storage, and maintain patient information (e.g., patient name, age, disease manifestation, number of doses administered per patient, other drugs administered).

Q. Healthcare facilities will ensure that any records associated with this EUA are maintained until notified by Sobi and/or FDA. Such records will be made available to Sobi, HHS, and FDA for inspection upon request.

Conditions Related to Printed Matter, Advertising, and Promotion

R. All descriptive printed matter, advertising, and promotional materials relating to the use of Kineret under this authorization shall be consistent with the authorized labeling, as well as the terms set forth in this EUA, and meet the requirements set forth in Section 502(a) and (n) of the Act, as applicable, and FDA implementing regulations. References to "approved

labeling", "permitted labeling", or similar terms in these requirements shall be understood to refer to the authorized labeling for the use of Kineret under this authorization. In addition, such materials shall:

- Be tailored to the intended audience.
- Not take the form of reminder advertisements, as that term is described in 21 CFR 202.1(e)(2)(i), 21 CFR 200.200 and 21 CFR 201.100(f).
- Present the same risk information relating to the major side effects and contraindications concurrently in the audio and visual parts of the presentation for advertising and promotional materials in audio-visual format.
- Be accompanied by the authorized labeling, if the promotional materials are not subject to Section 502(n) of the Act.
- Be submitted to FDA accompanied by Form FDA-2253 for consideration at least 14 calendar days prior to initial dissemination or first use.

S. Sobi may disseminate descriptive printed matter, advertising, and promotional materials relating to the emergency use of Kineret that provide accurate descriptions of safety results and efficacy results on a clinical endpoint(s) from the clinical trial(s) summarized in the authorized labeling. Such materials must include any limitations of the clinical trial data as described in the authorized labeling. Sobi may not imply that Kineret is FDA-approved for its authorized use by making statements such as "Kineret is safe and effective for the treatment of COVID-19."

T. All descriptive printed matter, advertising, and promotional material, relating to the use of Kineret under this authorization clearly and conspicuously shall state that:

- Kineret has not been approved, but has been authorized for emergency use by FDA under an EUA, for the treatment of COVID-19 in hospitalized adults with positive results of direct SARS-CoV-2 viral testing with pneumonia requiring supplemental oxygen (low- or high-flow oxygen) who are at risk of progressing to severe respiratory failure and likely to have an elevated suPAR; and

- The emergency use of Kineret is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biological products during the COVID-19 pandemic under Section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the declaration is terminated or authorization revoked sooner.

If the Agency notifies Sobi that any descriptive printed matter, advertising, or promotional materials do not meet the terms set forth in Conditions R through T of this EUA, Sobi must cease distribution of such descriptive printed matter, advertising, or promotional materials in accordance with the Agency's notification. Furthermore, as part of its notification, the Agency may also require Sobi to issue corrective communication(s).

Page 9 – Swedish Orphan Biovitrum AB

IV. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biological products during the COVID-19 pandemic is terminated under Section 564(b)(2) of the Act or the EUA is revoked under Section 564(g) of the Act.

Sincerely,

--/S/--

Patrizia Cavazzoni, M.D.
Director
Center for Drug Evaluation and Research
U.S. Food and Drug Administration

Dated: March 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05073 Filed 3–10–23; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0655]

Gastrointestinal Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Gastrointestinal Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on May 19, 2023, from 9 a.m. to 5 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings, including information regarding special accommodations due to a disability, may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–0655. Please note that late, untimely filed comments will not be considered. The docket will close on May 18, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 18, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before May 5, 2023, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is canceled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket FDA–2023–N–0655 for ''Gastrointestinal Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9

a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Jessica Seo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–7699, email: *GIDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will discuss new drug application (NDA) 212833, obeticholic acid (OCA) 25 mg oral tablets, submitted by Intercept Pharmaceuticals, Inc., for the treatment of pre-cirrhotic liver fibrosis due to nonalcoholic steatohepatitis.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before May 5, 2023, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1:30 p.m. to 2:30 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 27, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 28, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Jessica Seo (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05066 Filed 3–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–1066]

Agency Information Collection Activities; Proposed Collection; Comment Request; Custom Device Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with annual reporting for custom devices.

DATES: Either electronic or written comments on the collection of information must be submitted by May 12, 2023.

ADDRESSES: You may submit comments as follows. Please note that late,

untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 12, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–1066 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Annual Reporting for Custom Device Exemption.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Custom Devices

OMB Control Number 0910–0767—Extension

This information collection supports implementation of requirements in section 520(b) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(b), which governs custom devices. Custom devices are exempt from premarket approval requirements provided certain criteria is met. Agency regulations in 21 CFR 812.3 define a custom device and regulations in 21 CFR 807.85 provide for custom device exemptions. Section 520(b) also provides for the issuance of Agency guidance. The guidance document entitled, ''Custom Device Exemption'' (September 2014), and available for download at *https://www.fda.gov/media/89897/download,* provides definitions of terms used in the custom device exemption, explains how FDA interprets the ''5 units per year of a particular device type'' language contained in section 520(b)(2)(B) of the FD&C Act; describes what information should be submitted in a Custom Device Annual Report (''annual report''); and provides recommendations on how to submit an annual report for devices distributed under the custom device exemption. Specifically, the guidance

document instructs that Custom Device Annual Reports should be written in English and explains that respondents should direct two copies, including at least one hard copy, to:

Attn: Custom Device Annual Report Submission Coordinator, Division of Analysis and Program Operations, Office of Compliance, Center for Devices and Radiological Health, U.S. Food and Drug Administration, Bldg. 66, Rm. 2622, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002.

Although the submission of Custom Device Annual Reports are not required electronically, we strongly encourage submitting one of the two required copies as an eCopy (*i.e.,* a PDF file on a CD, DVD, or flash drive). Technical instructions are also provided in the guidance document entitled ''eCopy Program for Medical Device Submissions: Guidance for Industry and Food and Drug Administration Staff'' (April 2020); available for download at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM313794.pdf* for more information about submitting an eCopy.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Annual reporting for custom devices under 520(b) of the FD&C Act	34	1	34	40	1,360

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: March 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05051 Filed 3–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0973]

Revocation of Three Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorizations (EUAs) (the Authorizations) issued to Abbott Diagnostics Scarborough, Inc. (Abbott) for the BinaxNOW COVID–19 Ag 2 Card, and Standard BioTools, Inc. (Standard) for the Advanta Dx SARS–CoV–2 RT–PCR Assay and Advanta Dx COVID–19 EASE Assay. FDA revoked these Authorizations under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The revocations, which include an explanation of the reasons for each revocation, are reprinted in this document.

DATES: The Authorization for the BinaxNOW COVID–19 Ag 2 Card is revoked as of January 31, 2023. The Authorizations for the Advanta Dx SARS–CoV–2 RT–PCR Assay and Advanta Dx COVID–19 EASE Assay are revoked as of February 1, 2023.

ADDRESSES: Submit written requests for a single copy of the revocations to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the revocations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocations.

FOR FURTHER INFORMATION CONTACT: Jennifer Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On March 31, 2021, FDA issued an EUA to Abbott for the BinaxNOW COVID–19 Ag 2 Card, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on July 23, 2021 (86 FR 39040), as required by section 564(h)(1) of the FD&C Act. On August 25, 2020, FDA issued an EUA to Standard (then known as Fluidigm Corp.) for the Advanta Dx SARS–CoV–2 RT–PCR Assay, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. On February 7, 2022, FDA issued an EUA to Standard (then known as Fluidigm Corp.) for the Advanta Dx COVID–19 EASE Assay, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on July 22, 2022 (87 FR 43877), as required by section 564(h)(1) of the FD&C Act. Subsequent revisions to the Authorizations were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. EUA Revocation Requests

On January 20, 2023, FDA received a request from Abbott for the revocation of, and on January 31, 2023, FDA revoked, the Authorization for the BinaxNOW COVID–19 Ag 2 Card. Because Abbott requested FDA revoke the EUA for the BinaxNOW COVID–19 Ag 2 Card, FDA has determined that it is appropriate to protect the public health or safety to revoke this

Authorization. On January 30, 2023, FDA received a request from Standard for the withdrawal of, and on February 1, 2023, FDA revoked, the Authorizations for the Advanta Dx SARS–CoV–2 RT–PCR Assay and Advanta Dx COVID–19 EASE Assay. Because Standard requested FDA withdraw the EUAs for the Advanta Dx SARS–CoV–2 RT–PCR Assay and Advanta Dx COVID–19 EASE Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke these Authorizations.

III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at *https://www.regulations.gov/.*

IV. The Revocations

Having concluded that the criteria for revocation of the Authorizations under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUAs for Abbott's BinaxNOW COVID–19 Ag 2 Card, and Standard's Advanta Dx SARS–CoV–2 RT–PCR Assay and Advanta Dx COVID–19 EASE Assay. The revocations in their entirety follow and provide an explanation of the reasons for each revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

January 31, 2023

Angela Drysdale
DVP, Regulatory Affairs
Infectious Disease
Abbott Diagnostics Scarborough, Inc.
10 Southgate Road
Scarborough, ME 04074

Re: Revocation of EUA210275

Dear Ms. Drysdale:

This letter is in response to the request from Abbott Diagnostics Scarborough, Inc., received via email on January 20, 2023, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the BinaxNOW COVID-19 Ag 2 Card issued on March 31, 2021, amended on September 23, 2021, January 7, 2022, and November 1, 2022, and reissued on February 4, 2022. Abbott Diagnostics Scarborough, Inc., indicated that they no longer required the authorization of the BinaxNOW COVID-19 Ag 2 Card and requested that the EUA be revoked. FDA understands that no products associated with this EUA were released to the United States market.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Abbott Diagnostics Scarborough, Inc. has requested FDA revoke the EUA for the BinaxNOW COVID-19 Ag 2 Card, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210275 for the BinaxNOW COVID-19 Ag 2 Card, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the BinaxNOW COVID-19 Ag 2 Card is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Namandjé N. Bumpus, Ph.D.
Chief Scientist
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

February 1, 2023

Alex Kim
Chief Operating Officer
Standard BioTools Inc.
2 Tower Place Suite 2000
South San Francisco, CA 94080

Re: Revocation of EUA210664

Dear Alex Kim:

This letter is in response to the request from Standard BioTools Inc., received via email on January 30, 2023, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the Advanta Dx COVID-19 EASE Assay issued on February 7, 2022, and reissued on June 14, 2022. Standard BioTools Inc. indicated that they have discontinued the Advanta Dx COVID-19 EASE Assay and are no longer selling this EUA product. FDA understands that as of the date of this letter there will no longer be any viable Advanta Dx COVID-19 EASE Assay reagents remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Standard BioTools Inc. has requested FDA withdraw the EUA for the Advanta Dx COVID-19 EASE Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210664 for the Advanta Dx COVID-19 EASE Assay, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Advanta Dx COVID-19 EASE Assay is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Namandjé N. Bumpus, Ph.D.
Chief Scientist
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

January 31, 2023

Angela Drysdale
DVP, Regulatory Affairs
Infectious Disease
Abbott Diagnostics Scarborough, Inc.
10 Southgate Road
Scarborough, ME 04074

Re: Revocation of EUA210275

Dear Ms. Drysdale:

This letter is in response to the request from Abbott Diagnostics Scarborough, Inc., received via email on January 20, 2023, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the BinaxNOW COVID-19 Ag 2 Card issued on March 31, 2021, amended on September 23, 2021, January 7, 2022, and November 1, 2022, and reissued on February 4, 2022. Abbott Diagnostics Scarborough, Inc., indicated that they no longer required the authorization of the BinaxNOW COVID-19 Ag 2 Card and requested that the EUA be revoked. FDA understands that no products associated with this EUA were released to the United States market.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Abbott Diagnostics Scarborough, Inc. has requested FDA revoke the EUA for the BinaxNOW COVID-19 Ag 2 Card, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210275 for the BinaxNOW COVID-19 Ag 2 Card, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the BinaxNOW COVID-19 Ag 2 Card is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Namandjé N. Bumpus, Ph.D.
Chief Scientist
Food and Drug Administration

Dated: March 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05053 Filed 3–10–23; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0623]

Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Antimicrobial Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on April 17, 2023, from 9 a.m. to 4:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings, including information regarding special accommodations due to a disability, may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–0623. Please note that late, untimely filed comments will not be considered. The docket will close on April 14, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 14, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before April 3, 2023, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is canceled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–0623 for ''Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Takyiah Stevenson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–402–2507, email: *AMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will discuss new drug application (NDA) 216974, for sulbactam-durlobactam for injection, submitted by Entasis Therapeutics, Inc. The Applicant's proposed indication is for the treatment of infections due to *Acinetobacter baumannii-calcoaceticus* complex including multidrug-resistant and carbapenem-resistant strains.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a

manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before April 3, 2023, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 24, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 27, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Takyiah Stevenson (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05068 Filed 3–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2007–D–0369, FDA–2008–D–0610, FDA–2015–D–1211, FDA–2021–D–0409, FDA–2020–D–0987, FDA–2020–D–1057, FDA–2020–D–1106, FDA–2020–D–1106–0002, FDA–2020–D–1108, FDA–2020–D–1136, FDA–2020–D–1137, FDA–2020–D–1138, FDA–2020–D–1139, FDA–2020–D–1140, FDA–2020–D–1304, FDA–2020–D–1370, FDA–2020–D–1386, FDA–2020–D–1414, FDA–2020–D–1824, FDA–2020–D–1825, FDA–2020–D–2016, FDA–2021–D–1311]

Guidance Documents Related to Coronavirus Disease 2019 (COVID–19)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: On February 9, 2023, the Secretary of Health and Human Services (HHS) renewed the Coronavirus Disease 2019 (COVID–19) public health emergency declaration issued under section 319 of the Public Health Service Act (PHS Act) (''PHE declaration''), effective February 11, 2023. The declaration is expected to expire at the end of the day on May 11, 2023. The Food and Drug Administration (FDA, Agency, or we) has issued guidance documents to address the circumstances of the public health emergency and, more generally, COVID–19. Many of those guidance documents are tied to the duration of the PHE declaration. This notice is intended to provide clarity to stakeholders with respect to the guidance documents that will no longer be effective with the expiration of the PHE declaration and the guidances that FDA is revising to continue in effect after the expiration of the PHE declaration.

FOR FURTHER INFORMATION CONTACT: Diane Maloney, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; Erica Takai, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5456, Silver Spring, MD 20993–0002, 301–796–6353; Kimberly Thomas, Center for Drug Evaluation and Research, Food and Drug Administration (CDER), 10903 New Hampshire Ave., Bldg. 51, Rm. 6282, Silver Spring, MD 20993–0002, 301–796–2357; Philip Chao, Center for Food Safety and Applied Nutrition (CFSAN), CPK1 Rm. 1C001, HFS–024, Food and Drug Administration, College Park, MD 20740, 240–402–2112; Diane Heinz, Center for Veterinary Medicine (CVM), Food and Drug Administration, 7500 Standish Pl., HFV–6, Rockville, MD 20855, 240–402–5692; Amanda Wulf, Office of Regulatory Affairs (ORA), Food and Drug Administration, 12420 Parklawn Dr., ELEM–4044, Rockville, MD 20857, 301–796–8856.

SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 2020, as a result of confirmed cases of COVID–19, and after consultation with public health officials as necessary, the prior Secretary of HHS, pursuant to the authority under section 319 of the PHS Act (42 U.S.C. 247d), determined that a PHE existed (COVID–19 PHE) and had existed since January 27, 2020, nationwide.[1] On February 9, 2023, the Secretary of HHS renewed the COVID–19 PHE declaration, effective February 11, 2023. On February 9, based on current COVID–19 trends, HHS announced that it is planning for the declaration to expire at the end of the day on May 11, 2023. (HHS, Fact Sheet: COVID–19 Public Health Emergency Transition Roadmap (February 9, 2023), available at *https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html#:~:text=Based%20on%20current%20COVID%2D19,day%20on%20May%2011%2C%202023*).

Since the start of the COVID–19 pandemic in 2020, FDA has issued more than 80 COVID–19-related guidances (not including revisions). In the **Federal Register** of March 25, 2020 (85 FR 16949) (available at *https://www.govinfo.gov/content/pkg/FR-2020-03-25/pdf/2020-06222.pdf*), FDA announced general procedures for making available FDA guidances related to the COVID–19 PHE. We have updated or otherwise modified our COVID–19-related guidances in response to comments received, as appropriate, and as relevant needs and circumstances evolved throughout the COVID–19 PHE. We have withdrawn, and announced the

[1] Secretary of HHS, ''Determination that a Public Health Emergency Exists'' (originally issued on January 31, 2020, and subsequently renewed, pursuant to the authority under section 319 of the PHS Act), available at: *https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx.* There are additional types of determinations and declarations related to emergencies, including public health emergencies, that are distinct from a PHE declared pursuant to section 319 of the PHS Act. For instance, the determination and declarations made under section 564 of the Federal Food, Drug, and Cosmetic Act (FD&C Act), which enable the issuance of Emergency Use Authorizations (EUAs), are independent from a declaration under section 319 of the PHS Act.

withdrawal of, several COVID–19-related guidances after determining that the policies no longer represented the Agency's current thinking.[2] In December 2021, we issued a draft guidance ''Transition Plan for Medical Devices That Fall Within Enforcement Policies Issued During the COVID–19 Public Health Emergency'' (''draft device enforcement policy transition guidance'') that describes FDA's proposed plans for devices that fall within the enforcement policies of certain device guidances issued during the COVID–19 PHE.[3] FDA intends to finalize the draft guidance as soon as practicable. In the **Federal Register** of December 8, 2022 (87 FR 75275), FDA announced the availability of a final guidance ''Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria,'' which replaced the COVID–19-related guidance FDA issued in April 2020, and is available at *https://www.fda.gov/media/163737/download.*

Circumstances have changed since 2020 when FDA first began issuing guidances to support COVID–19 response efforts. For example, several COVID–19 guidances were developed to help address supply chain disruptions. In several instances, supply chains have stabilized and the relevant COVID–19 guidances are no longer needed. Some COVID–19 guidances were issued to clarify previously issued recommendations by tailoring them to specific considerations for the pandemic. Because these COVID–19 guidances will not be needed when the PHE declaration expires, FDA is not extending them. In other instances, the science behind certain recommendations has advanced, and FDA may want to update certain guidances to reflect new data.

This notice addresses the 72 COVID–19-related guidance documents that are currently in effect and listed below. Most of these COVID–19-related guidances state that they are intended to remain in effect only for the duration of the COVID–19 PHE declaration. In light of HHS's recent announcement that the PHE declaration is expected to expire on May 11, 2023, FDA has reviewed these COVID–19-related guidance documents and has examined whether any of the guidances should be continued past expiration of the PHE declaration—for example, to provide stakeholders including industry, healthcare providers, patients, consumers, and FDA time to transition from policies adopted and operations implemented during the COVID–19 PHE.

Based on this review, in this notice, FDA is announcing that the COVID–19-related guidances listed in section II, table 1 will no longer be in effect when the PHE declaration expires. FDA also is announcing that the COVID–19-related guidance documents listed in section III, table 2 of this notice are being revised to continue in effect for 180 days after the PHE declaration expires, then will no longer be in effect. The guidance documents listed in section IV, table 3 of this notice are being revised to continue in effect for 180 days after the PHE declaration expires, during which time FDA plans to further revise these guidances. Finally, this notice lists, in section V, table 4, COVID–19-related guidance documents whose intended duration is not tied to the COVID–19 PHE and that will remain in effect when the COVID–19 PHE declaration expires.

FDA's revision of the guidances in section III, table 2 and section IV, table 3 so that they continue in effect for a brief period after expiration of the PHE declaration constitutes a minor change under 21 CFR 10.115(c)(2) and (g)(4). Even if these revisions were not minor changes, FDA has determined that obtaining comment prior to implementation is not feasible or appropriate, given the need for an orderly transition and given that the PHE declaration is anticipated to expire on May 11, 2023. Moreover, FDA already has solicited comments on these policies, through dockets for the guidances, and we have taken the comments received into account in issuing this notice. This period of time will provide an opportunity for stakeholders to transition from policies adopted and operations implemented during the COVID–19 PHE (see section III, table 2 below) or for FDA to further revise or otherwise update the guidance (see section IV, table 3 below). Although the changes to continue the guidances in section III, table 2 and section IV, table 3 for a brief period after the PHE declaration expires are being implemented immediately without prior comment, FDA will consider all comments received and revise the guidances as appropriate.

As the COVID–19 pandemic evolves, FDA continues to assess the needs and circumstances related to the policies in our COVID–19-related guidances, and we may alter our approach for individual guidances listed in this notice. For instance, FDA could withdraw a guidance before the COVID–19 PHE declaration expires should reassessment show policy reflected in a particular guidance document is no longer needed. However, should FDA alter our approach for particular guidances, we will do so consistent with our good guidance practices regulation (21 CFR 10.115).

II. COVID–19 Guidance Documents That Will No Longer Be in Effect Upon Expiration of the COVID–19 PHE Declaration

FDA has identified 22 COVID–19-related guidances that should no longer be in effect upon expiration of the COVID–19 PHE declaration. Most of these guidances state that they are intended to remain in effect only for the duration of the declared COVID–19 PHE. FDA has assessed the needs and circumstances related to the policies articulated in the 22 guidances listed in table 1. FDA also has considered comments submitted to the dockets for these guidances, and our experience with implementation. Upon review, FDA continues to believe that it is appropriate for these guidances to end when the PHE declaration expires.

While generally intended to be in effect for the duration of the COVID–19 PHE declaration, five guidances listed in table 1 also indicated that FDA expected their recommendations would continue to assist the Agency and/or stakeholders outside the expiration of the PHE declaration, otherwise reflected FDA's current thinking, or were proposed to be extended in the draft device enforcement policy transition guidance.

[2] See 86 FR 55620 (October 6, 2021), available at *https://www.federalregister.gov/documents/2021/10/06/2021-21798/guidance-documents-related-to-coronavirus-disease-2019-availability;* 86 FR 56960 (October 13, 2021), available at *https://www.federalregister.gov/documents/2021/10/13/2021-22108/alcohol-based-hand-sanitizer-products-withdrawal-of-three-temporary-guidance-documents-issued-during;* 87 FR 34691 (June 7, 2022), available at *https://www.federalregister.gov/documents/2022/06/07/2022-12176/effects-of-the-covid-19-public-health-emergency-on-formal-meetings-and-user-fee-applications-for;* 87 FR 78111 (December 21, 2022), available at *https://www.federalregister.gov/documents/2022/12/21/2022-27673/enforcement-policy-regarding-federal-veterinarian-client-patient-relationship-requirements-to;* 88 FR 8872 (February 10, 2023), available at *https://www.federalregister.gov/documents/2023/02/10/2023-02809/temporary-policy-on-repackaging-or-combining-propofol-drug-products-during-the-covid-19-public.* In addition, one guidance document entitled ''Policy for Certain REMS Requirements During the Tocilizumab Shortage Related to the COVID–19 Public Health Emergency'' stated it would ''remain in effect for the duration of the tocilizumab shortage''; because the tocilizumab shortage resolved on March 30, 2022, the guidance is no longer in effect (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/withdrawn-guidances-biologics*).

[3] See 86 FR 72973 (December 23, 2021). Concurrent with issuance of the draft device enforcement policy transition guidance, FDA also issued ''Transition Plan for Medical Devices Issued Emergency Use Authorizations (EUAs) During the COVID–19 Public Health Emergency,'' which described and sought comment on FDA's general recommendations for a transition for devices issued EUAs. See 86 FR 72978 (December 23, 2021). FDA also intends to finalize this guidance as soon as practicable.

Upon assessment of these guidances, FDA has found that these will no longer be needed because the recommendations are described in other guidance documents or the conditions related to the COVID–19 PHE as outlined in the guidances have changed and stakeholders have resumed or adjusted operations and are no longer relying on the guidances. Therefore, FDA has concluded it is appropriate for these five guidances, marked with an asterisk in table 1, to end upon expiration of the PHE declaration.

TABLE 1—GUIDANCE DOCUMENTS THAT WILL NO LONGER BE IN EFFECT UPON EXPIRATION OF THE COVID–19 PHE DECLARATION

Docket No.	Lead center	Title of guidance
FDA–2020–D–1137	CBER	Manufacturing Considerations for Licensed and Investigational Cellular and Gene Therapy Products During COVID–19 Public Health Emergency.
FDA–2020–D–1136	CDER	COVID–19 Public Health Emergency Policy on COVID–19-Related Sanitation Tunnels.
FDA–2021–D–1311	CDER	Nonclinical Considerations for Mitigating Nonhuman Primate Supply Constraints Arising from the COVID–19 Pandemic.*
FDA–2020–D–1136	CDER	Development of Abbreviated New Drug Applications During the COVID–19 Pandemic—Questions and Answers.
FDA–2020–D–1136	CDER	Protecting Participants in Bioequivalence Studies for Abbreviated New Drug Applications During the COVID–19 Public Health Emergency.
FDA–2020–D–1136	CDER	Review Timelines for Applicant Responses to Complete Response Letters When a Facility Assessment Is Needed During the COVID–19 Public Health Emergency Guidance for Industry.
FDA–2020–D–1136	CDER	Resuming Normal Drug and Biologics Manufacturing Operations During the COVID–19 Public Health Emergency.*
FDA–2020–D–1136	CDER	Good Manufacturing Practice Considerations for Responding to COVID–19 Infection in Employees in Drug and Biological Products Manufacturing.*
FDA–2020–D–1136	CDER	Statistical Considerations for Clinical Trials During the COVID–19 Public Health Emergency.
FDA–2020–D–1136	CDER	Effects of the COVID–19 Public Health Emergency on Formal Meetings and User Fee Applications—Questions and Answers.
FDA–2020–D–1136	CDER	Temporary Policy for Compounding of Certain Drugs for Hospitalized Patients by Outsourcing Facilities During the COVID–19 Public Health Emergency.
FDA–2020–D–1136	CDER	Temporary Policy for Compounding of Certain Drugs for Hospitalized Patients by Pharmacy Compounders not Registered as Outsourcing Facilities During the COVID–19 Public Health Emergency Guidance for Industry.
FDA–2020–D–1136	CDER	Temporary Policy Regarding Non-Standard PPE Practices for Sterile Compounding by Pharmacy Compounders not Registered as Outsourcing Facilities During the COVID–19 Public Health Emergency.
FDA–2020–D–1136	CDER	Temporary Policy on Prescription Drug Marketing Act Requirements for Distribution of Drug Samples During the COVID–19 Public Health Emergency.*
FDA–2020–D–1136	CDER	COVID–19 Public Health Emergency: General Considerations for Pre-IND Meeting Requests for COVID–19 Related Drugs and Biological Products.
FDA–2020–D–1136	CDER	Exemption and Exclusion from Certain Requirements of the Drug Supply Chain Security Act During the COVID–19 Public Health Emergency.[4]
FDA–2020–D–1138	CDRH	Notifying CDRH of a Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the FD&C Act During the COVID–19 Public Health Emergency (Revised).
FDA–2020–D–1138	CDRH	Enforcement Policy for the Quality Standards of the Mammography Quality Standards Act During the COVID–19 Public Health Emergency.*
FDA–2020–D–1139	CFSAN	Temporary Policy Regarding Enforcement of 21 CFR Part 118 (the Egg Safety Rule) During the COVID–19 Public Health Emergency.
FDA–2020–D–1139	CFSAN	Temporary Policy Regarding Packaging and Labeling of Shell Eggs Sold by Retail Food Establishments During the COVID–19 Public Health Emergency.
FDA–2020–D–1139	CFSAN	Temporary Policy Regarding Nutrition Labeling of Certain Packaged Food During the COVID–19 Public Health Emergency.
FDA–2020–D–1139	CFSAN	Reporting a Temporary Closure or Significantly Reduced Production by a Human Food Establishment and Requesting FDA Assistance During the COVID–19 Public Health Emergency.

III. COVID–19 Guidance Documents That FDA Is Revising To Continue in Effect for 180 Days After the PHE Declaration Expires To Provide a Period for Stakeholder Transition

Based on our review, FDA has identified 22 COVID–19-related guidances that, similar to the guidances previously discussed, can be discontinued in connection with expiration of the COVID–19 PHE declaration but for which an additional wind-down period is appropriate to allow for an orderly transition. In general, these guidances were intended to be in effect for the duration of the declared COVID–19 PHE. However, FDA has considered the circumstances surrounding the current phase of the COVID–19 pandemic, comments submitted to the dockets for these guidances, and our experience with implementation, and has determined that for these guidances, stakeholders such as industry, healthcare providers, patients, consumers, and FDA would benefit from additional time to

[4] While the guidance document entitled ''Exemption and Exclusion from Certain Requirements of the Drug Supply Chain Security Act During the COVID–19 Public Health Emergency'' will no longer be in effect when the COVID–19 PHE declared under section 319 of the PHS Act expires, the Agency retains authority under section 582(a) of the FD&C Act (21 U.S.C. 360eee–1(a)) to grant waivers, exemptions, and exceptions to allow for continued distribution of covered COVID–19 Drug Supply Chain Security Act products, as appropriate, which may be used to avoid disruption beyond the expiration of such declaration.

transition from the policies adopted during the COVID–19 PHE. Thus, FDA is revising the 22 guidances listed in table 2 to continue in effect for 180 days after the expiration of the PHE declaration—*i.e.,* after November 7, 2023, they will no longer be in effect. We note that some of these guidances are addressed in the draft device enforcement policy transition guidance, which, when finalized, may specify a duration period for these guidances that is longer than the time period described here. Therefore, the guidances listed in table 2 are being revised to reflect that they continue in effect for 180 days after the COVID–19 PHE declaration expires, with the exception of guidances covered under the draft device enforcement policy transition guidance. Those device guidances, which are identified in table 2 with an asterisk, are being revised to reflect that they continue in effect for 180 days after expiration of the PHE declaration unless a different intended duration for the guidance is set forth in the final device transition guidance.

TABLE 2—GUIDANCE DOCUMENTS FDA IS REVISING TO CONTINUE IN EFFECT FOR 180 DAYS AFTER THE COVID–19 PHE DECLARATION EXPIRES

Docket No.	Lead center	Title of guidance
FDA–2020–D–1136	CDER	Policy for the Temporary Use of Portable Cryogenic Containers Not in Compliance With 21 CFR 211.94(e)(1) For Oxygen and Nitrogen During the COVID–19 Public Health Emergency Guidance for Industry.
FDA–2020–D–1136	CDER	Manufacturing, Supply Chain, and Drug and Biological Product Inspections During COVID–19 Public Health Emergency Questions and Answers.
FDA–2020–D–1106	CDER	Policy for Certain REMS Requirements During the COVID–19 Public Health Emergency Guidance for Industry and Health Care Professionals.
FDA–2020–D–1138	CDRH	Enforcement Policy for Remote Digital Pathology Devices During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.*
FDA–2020–D–1138	CDRH	Enforcement Policy for Imaging Systems During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.*
FDA–2020–D–1138	CDRH	Enforcement Policy for Non-Invasive Fetal and Maternal Monitoring Devices Used to Support Patient Monitoring During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.*
FDA–2020–D–1138	CDRH	Enforcement Policy for Telethermographic Systems During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.*
FDA–2020–D–1138	CDRH	Enforcement Policy for Digital Health Devices for Treating Psychiatric Disorders During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.*
FDA–2020–D–1138	CDRH	Enforcement Policy for Extracorporeal Membrane Oxygenation and Cardiopulmonary Bypass Devices During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.*
FDA–2020–D–1138	CDRH	Enforcement Policy for Remote Ophthalmic Assessment and Monitoring Devices During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.*
FDA–2020–D–1138	CDRH	Enforcement Policy for Infusion Pumps and Accessories During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.*
FDA–2020–D–1138	CDRH	Enforcement Policy for Face Shields, Surgical Masks, and Respirators During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.* [5]
FDA–2020–D–1138	CDRH	Enforcement Policy for Gowns, Other Apparel, and Gloves During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.*
FDA–2020–D–1138	CDRH	Enforcement Policy for Sterilizers, Disinfectant Devices, and Air Purifiers During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.*
FDA–2020–D–1138	CDRH	Enforcement Policy for Ventilators and Accessories and Other Respiratory Devices During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.*
FDA–2020–D–1138	CDRH	Enforcement Policy for Modifications to FDA Cleared Molecular Influenza and RSV Tests During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.*
FDA–2020–D–1138	CDRH	Coagulation Systems for Measurement of Viscoelastic Properties: Enforcement Policy During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency (Revised).*
FDA–2020–D–1138	CDRH	Enforcement Policy for Viral Transport Media During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency (Revised).*
FDA–2020–D–1139	CFSAN	Temporary Policy Regarding Nutrition Labeling of Standard Menu Items in Chain Restaurants and Similar Retail Food Establishments During the COVID–19 Public Health Emergency.
FDA–2020–D–1139	CFSAN	Temporary Policy Regarding Certain Food Labeling Requirements During the COVID–19 Public Health Emergency: Minor Formulation Changes and Vending Machines.
FDA–2020–D–1386	CFSAN	Temporary Policy During the COVID–19 Public Health Emergency Regarding the Qualified Exemption from the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption.
FDA–2020–D–1140	CVM	CVM GFI #270—Guidance on the Conduct and Review of Studies to Support New Animal Drug Development during the COVID–19 Public Health Emergency.

[5] FDA is revising the guidance ''Enforcement Policy for Face Masks, Barrier Face Coverings, Face Shields, Surgical Masks, and Respirators During the Coronavirus Disease (COVID–19) Public Health Emergency (Revised)'' to split it into two separate guidance documents, each with identical policies to the corresponding parts of the September 2021 version. Concurrent with issuance of this guidance addressing face shields, surgical masks, and respirators, FDA also is issuing ''Enforcement Policy for Face Masks and Barrier Face Coverings During the Coronavirus Disease (COVID–19) Public Health Emergency.'' That guidance is listed in table 3 of this notice.

IV. COVID–19 Guidance Documents FDA Is Revising To Continue in Effect for 180 Days After Expiration of the PHE Declaration, During Which Time FDA Plans to Further Revise the Guidances

Based on our review, FDA has identified 24 COVID–19-related guidances that we intend to retain with appropriate changes after expiration of the COVID–19 PHE declaration. Therefore, FDA is revising the 24 guidances listed in table 3 to continue in effect for 180 days after the COVID–19 PHE declaration expires. During that time, FDA plans to further revise each of these guidances with any appropriate changes based on comments received and the Agency's experience with implementation. For example, FDA could revise a guidance so its duration aligns with an applicable declaration made under section 564 of the FD&C Act enabling the issuance of EUAs, or by removing language describing intended duration. Once a revised final guidance is issued, which could occur sooner than 180 days after the PHE declaration expires, it will supersede the guidance listed in table 3.

TABLE 3—GUIDANCE DOCUMENTS FDA IS REVISING TO CONTINUE IN EFFECT FOR 180 DAYS AFTER THE PHE DECLARATION EXPIRES, DURING WHICH TIME FDA PLANS TO FURTHER REVISE THE GUIDANCES

Docket No.	Lead center	Title of guidance
FDA–2020–D–1137	CBER	Emergency Use Authorization for Vaccines to Prevent COVID–19.
FDA–2020–D–1825	CBER	Investigational COVID–19 Convalescent Plasma.
FDA–2015–D–1211	CBER	Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products.
FDA–2020–D–1137	CBER	Development and Licensure of Vaccines to Prevent COVID–19.
FDA–2020–D–1137	CBER	Alternative Procedures for Blood and Blood Components During the COVID–19 Public Health Emergency.
FDA–2020–D–1106–0002	CDER	FDA Guidance on Conduct of Clinical Trials of Medical Products during COVID–19 Public Health Emergency.
FDA–2020–D–1370	CDER	COVID–19: Developing Drugs and Biological Products for Treatment or Prevention.
FDA–2020–D–2016	CDER	Policy for Testing of Alcohol (Ethanol) and Isopropyl Alcohol for Methanol, Including During the COVID–19 Public Health Emergency (COVID–19).
FDA–2020–D–1136	CDER	COVID–19: Potency Assay Considerations for Monoclonal Antibodies and Other Therapeutic Proteins Targeting SARS-CoV–2 Infectivity.
FDA–2020–D–1824	CDER	Assessing COVID–19-Related Symptoms in Outpatient Adult and Adolescent Subjects in Clinical Trials of Drugs and Biological Products for COVID–19 Prevention or Treatment.
FDA–2020–D–1414	CDER	Institutional Review Board (IRB) Review of Individual Patient Expanded Access Requests for Investigational Drugs and Biological Products During the COVID–19 Public Health Emergency Guidance for IRBs and Clinical Investigators.
FDA–2020–D–1057	CDER	Notifying FDA of a Permanent Discontinuance or Interruption in Manufacturing Under Section 506C of the FD&C Act Guidance for Industry
FDA–2021–D–0409	CDER	COVID–19: Master Protocols Evaluating Drugs and Biological Products for Treatment or Prevention.
FDA–2020–D–1136	CDER	Remote Interactive Evaluations of Drug Manufacturing and Bioresearch Monitoring Facilities During the COVID–19 Public Health Emergency Guidance for Industry.
FDA–2020–D–1136	CDER	COVID–19 Container Closure System and Component Changes: Glass Vials and Stoppers Guidance for Industry.
FDA–2020–D–1136	CDER	Development of Monoclonal Antibody Products Targeting SARS-CoV–2, Including Addressing the Impact of Emerging Variants, During the COVID 19 Public Health Emergency.
FDA–2020–D–1138	CDRH	Enforcement Policy for Face Masks and Barrier Face Coverings During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.[6]
FDA–2020–D–1138	CDRH	Supplements for Approved Premarket Approval (PMA) or Humanitarian Device Exemption (HDE) Submissions During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency (Revised).
FDA–2020–D–1138	CDRH	Enforcement Policy for Clinical Electronic Thermometers During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.
FDA–2020–D–1138	CDRH	Enforcement Policy for Non-Invasive Remote Monitoring Devices Used to Support Patient Monitoring During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency (Revised).
FDA–2020–D–1139	CFSAN	Returning Refrigerated Transport Vehicles and Refrigerated Storage Units to Food Uses After Using Them to Preserve Human Remains During the COVID–19 Pandemic.
FDA–2020–D–1108	CFSAN	Temporary Policy Regarding Preventive Controls and FSVP Food Supplier Verification Onsite Audit Requirements During the COVID–19 Public Health Emergency.
FDA–2020–D–1304	CFSAN	Temporary Policy Regarding Accredited Third-Party Certification Program Onsite Observation and Certificate Duration Requirements During the COVID–19 Public Health Emergency.
FDA–2020–D–1140	CVM	CVM GFI #271 Reporting and Mitigating Animal Drug Shortages during the COVID–19 Public Health Emergency.

[6] FDA is revising the guidance ''Enforcement Policy for Face Masks, Barrier Face Coverings, Face Shields, Surgical Masks, and Respirators During the Coronavirus Disease (COVID–19) Public Health Emergency (Revised)'' to split it into two separate guidance documents, each with identical policies to the corresponding parts of the September 2021 version. Concurrent with issuance of this guidance addressing face masks and barrier face coverings, FDA also is issuing ''Enforcement Policy for Face Shields, Surgical Masks, and Respirators During the Coronavirus Disease (COVID–19) Public Health Emergency.'' That guidance is listed in table 2 of this notice.

V. Other COVID–19 Related Guidance Documents

FDA also has issued the four guidance documents listed in table 4 whose policies and recommendations have supported COVID–19 response efforts, but whose duration is not tied to the COVID–19 PHE declaration, and will remain in effect after expiration of the COVID–19 PHE declaration. In January 2023, FDA revised the two guidances marked with an asterisk in table 4 to state their policies are intended to remain in effect only for the duration of the declaration under section 564 of the FD&C Act by the Secretary of HHS on February 4, 2020, declaring that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the novel coronavirus (2019-nCoV) (85 FR 7316). These guidances previously stated that they were intended to remain in effect only for the duration of the PHE declaration.

TABLE 4—OTHER COVID–19-RELATED GUIDANCE DOCUMENTS

Docket No.	Lead center	Title of guidance
FDA–2007–D–0369	CDER	Product-Specific Guidances for Chloroquine and Hydroxychloroquine.
FDA–2008–D–0610	CDER	Postmarketing Adverse Event Reporting for Medical Products and Dietary Supplements During a Pandemic.
FDA–2020–D–0987	CDRH	Policy for Coronavirus Disease-2019 Tests (Revised).*
FDA–2020–D–0987	CDRH	Policy for Evaluating Impact of Viral Mutations on COVID–19 Tests.*

VI. Electronic Access

Persons with access to the internet may obtain the guidances listed in this notice at *https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders* or *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.*

Dated: March 8, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05094 Filed 3–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1794]

Evaluation of Gastric pH-Dependent Drug Interactions With Acid-Reducing Agents: Study Design, Data Analysis, and Clinical Implications; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Evaluation of Gastric pH-Dependent Drug Interactions With Acid-Reducing Agents: Study Design, Data Analysis, and Clinical Implications.'' This guidance focuses on specific recommendations pertinent to pH-dependent drug-drug interaction (DDI) assessment and describes the current recommendations of FDA regarding when clinical DDI studies with acid-reducing agents (ARAs) are needed, design of the clinical studies, interpretation of study results, and options for managing pH-dependent DDIs in patients. This guidance finalizes the draft guidance of the same title issued on December 1, 2020.

DATES: The announcement of the guidance is published in the **Federal Register** on March 13, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions*): Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1794 for ''Evaluation of Gastric pH-Dependent Drug Interactions With Acid-Reducing Agents: Study Design, Data Analysis, and Clinical Implications.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit

both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Anuradha Ramamoorthy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3118, Silver Spring, MD 20993, 240–402–6426, *Anuradha.Ramamoorthy@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Evaluation of Gastric pH-Dependent Drug Interactions With Acid-Reducing Agents: Study Design, Data Analysis, and Clinical Implications.'' ARAs such as antacids, histamine H2-receptor antagonists, and proton pump inhibitors (PPIs) are widely used, and many of these drugs are available over-the-counter. Because ARAs can elevate the gastric pH, concomitant administration of a drug with an ARA could alter the solubility, dissolution, and bioavailability of the drug, potentially resulting in a loss of efficacy for weak-base drugs or increased toxicity for weak-acid drugs. Therefore, it is important to assess the susceptibility of an investigational drug to gastric pH change-mediated DDIs early in drug development, characterize the DDI effect with clinical studies when needed, and communicate the relevant findings in the drug product labeling. This guidance addresses when clinical DDI studies with ARAs should be conducted, the design and conduct of clinical pH-dependent DDI studies, alternative approaches for evaluating pH-dependent DDIs, and extrapolating clinical DDI study results among drug classes of ARAs.

This guidance finalizes the draft guidance entitled ''Evaluation of Gastric pH-Dependent Drug Interactions With Acid-Reducing Agents: Study Design, Data Analysis, and Clinical Implications'' issued on December 1, 2020 (85 FR 77222). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include: (1) adding footnotes to update the framework to evaluate the pH-DDI liability of an investigational drug based on solubility and dissolution of a drug product, (2) additional literature and FDA guidance references included to provide additional clarity, (3) modified examples of PPIs and their doses for clinical DDI studies, and (4) editorial changes to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Evaluation of Gastric pH-Dependent Drug Interactions With Acid-Reducing Agents: Study Design, Data Analysis, and Clinical Implications.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information for submissions of investigational new drug applications, new drug applications, and biologic license applications in 21 CFR parts 312, 314, and 601 have been approved under OMB control numbers 0910–0014, 0910–0001, and 0910–0338, respectively. The collections of information in 21 CFR 201.56 and 201.57 pertaining to the submission of prescription drug labeling have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: March 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05067 Filed 3–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Office of Minority Health Research Coordination (OMHRC) Research Training and Mentor Programs Applications (National Institute of Diabetes and Digestive and Kidney Diseases)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health National Institute of Diabetes and Digestive and Kidney Diseases will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Winnie Martinez, Project Officer, 6707 Democracy Blvd., 9th

Floor, Bethesda, MD 20892 or call non-toll-free number (301) 435–2988 or Email your request, including your address to: *Winnie.Martinez@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Office of Minority Health Research Coordination Training and Mentor Programs Applications 0925–0748, REVISION, exp., date 8/31/2023 National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH).

Need and Use of Information Collection: In 2000, the National Institute of Diabetes and Digestive and Kidney Diseases of the National Institutes of Health established the Office of Minority Health Research Coordination to address the burden of diseases and disorders that disproportionately impact the health of minority populations. One of the major goals of the office is to build and sustain a pipeline of researchers from underrepresented populations in the biomedical, behavioral, clinical, and social sciences, with a focus on NIDDK mission areas. The office accomplishes this goal by administering a variety of programs and initiatives to recruit high school through post-doctoral educational level individuals into OMHRC research training and mentor programs: The Short-Term Research Experience Program to Unlock Potential (STEP–UP), the Diversity Summer Research Training Program (DSRTP) for Undergraduate Students, and Network of Minority Health Research Investigators (NMRI), the NIH/National Medical Association (NMA) Academic Career Fellow Travel Awards, and the NIDDK/National Hispanic Medical Association (NHMA) Academic Career Fellow Travel Awards.

Identification of participants to matriculate into the program and initiatives comes from applications and related forms hosted through the NIDDK website. The proposed information collection activity is necessary in order to determine the eligibility and quality of potential awardees for traineeship in these programs.

OMB approval is requested for three (3) years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,651.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Attachment 1: Short-Term Research Experience Program to Unlock Potential (STEP–UP) Application	600	1	1	600
Attachment 2: STEP–UP Student Feedback Form	175	1	15/60	44
Attachment 3: STEP–UP Participant Survey Form	2,200	1	5/60	183
Attachment 4: Diversity Summer Research Training Program (DSRTP) Feedback Form	14	1	30/60	7
Attachment 5: Network of Minority Health Research Investigators (NMRI) Enrollment Form	200	1	15/60	50
Attachment 6: NMRI Evaluation Form	120	1	30/60	60
Attachment 7: NMRI Survey Form	800	1	30/60	400
Attachment 8: NMRI Mentor-Mentee Agreement Form	100	1	30/60	50
Attachment 9: NIH/National Medical Association (NMA) Academic Career Fellow Travel Awards Application	200	1	20/60	67
Attachment 10: NIH/NMA Feedback Form	40	1	30/60	20
Attachment 11: NIH/NMA Academic Career Development Workshop Contact Information and Feedback Form	1,000	1	5/60	83
Attachment 12: NIH/National Hispanic Medical Association (NHMA) Academic Career Fellow Travel Awards Application	200	1	20/60	67
Attachment 13: NIH/NHMA Feedback Form	40	1	30/60	20
Total	.....	5689	.....	1651

Dated: March 7, 2023.

Melbourne L. Bull Jr.,

NIDDK Project Clearance Liaison, Office of Management Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2023–05085 Filed 3–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Brain Initiative TMM RFA (DA–23–039) Review.

Date: April 19, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, DEM II, Suite 920, 6707 Democracy Blvd., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Alexander O. Komendantov, Ph.D., MS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20817, (301) 451–3397, *alexandar.komendantov@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: March 7, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05062 Filed 3–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–21–015: 2023 Pioneer Award Review.

Date: April 3–5, 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: James W. Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Development of the Fetal Immune System.

Date: April 5, 2023.

Time: 11:00 a.m. to 3:00 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: Andrew M. Wolfe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 6214, Bethesda, MD 20892, *andrew.wolfe@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Microbial Diagnostics and Detection of Infectious Agents, Food and Waterborne Pathogens, and Methods in Microbial Sterilization, Disinfection, and Bioremediation.

Date: April 10, 2023.

Time: 8:30 a.m. to 9:00 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: Debbie Mukherjea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–6481, *debbie.mukherjea@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: March 7, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05001 Filed 3–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; Mentored Clinician Scientist Career Development Applications (K08/K23).

Date: April 5, 2023.

Time: 10:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700B Rockledge Drive, Bethesda, MD 20854 (Virtual Meeting).

Contact Person: Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Eye Institute, Bethesda, MD 20817, 240–276–5864, *jennifer.schiltz@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 7, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05002 Filed 3–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Advisory Board.

The meeting will be held as a virtual meeting and is open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

A portion of the National Cancer Advisory Board meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the

competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Date: March 27, 2023.

Closed: 1:00 p.m. to 1:30 p.m.

Agenda: Review of ongoing intramural research efforts and the discussion of confidential personnel issues.

Open: 1:45 p.m. to 2:15 p.m.

Agenda: NCI Director's report and other related business.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, 7th Floor, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: NCAB: *https://deainfo.nci.nih.gov/advisory/ncab/ncabmeetings.htm,* where an agenda, instructions for accessing the virtual NCAB meetings, and any additional information for the meetings will be posted when available.

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 8, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05083 Filed 3–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2022–0015]

Agency Information Collection Activities: Information Collection for the State, Local, Tribal and Private Sector (SLTPS) Clearance Program

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; reinstatment and revision of information collection request: 1670–0013.

SUMMARY: The Cybersecurity and Infrastructure Security Agency (CISA) will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. CISA previously published this information collection request (ICR) in the **Federal Register** on Novemebr 21, 2022 for a 60-day public comment period. Zero comments were received by CISA. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted April 12, 2023. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.* All submissions must include the words ''Department of Homeland Security'' and the OMB Control Number 1670–0013—replace Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: The Department of Homeland Security (DHS), Quintin Whitaker, 202–805–4959 *PSCP@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Partnerships between the U.S. Government and the state, local, tribal and private sector at times necessitate the sharing of classified information. The State, Local, Tribal and Private Sector (SLTPS) Clearance Request Form facilitates this sharing by sponsoring security clearances for certain members of each sector based on either their membership on a Sector Coordinating Council (SCC)/association or their infrastructure protection job-related duties and their need-to-know. The SLTPS is designed to sponsor security clearances for state, local, tribal and private sector officials involved in the infrastructure protection mission. These partners are subject matter experts within specific industries and have specialized knowledge not available within the Department of Homeland Security (DHS) and other Federal Departments or Agencies. Private citizens do not receive monetary compensation for their time. CISA created this program to sponsor clearances for these individuals who are not employed by or contracted with another Federal agency (the traditional means of obtaining a clearance) and must have clearances.

The Cyber Information Sharing and Collaboration Agreement (CISCA) and Classified Critical Infrastructure Protection Program (CCIPP) nominees will also use the form in the same manner as the SLTPS. The form updates will include adding State and Local, CISCA and CCIPP to the drop-down capabilities. Type of submission will have a dropdown capability added. Subsectors will be added to some of the Sectors. A generic approving signature title will be added.

CISA collects necessary information through 1670–0013 to facilitate security clearances needed for sharing classified information with the vetted SLTPS Stakeholders.

The U.S. Government is authorized to ask for this information under sections 201 and 229 of the Homeland Security Act (Pub. L. 107–296, 6 U.S.C. 121, 150), and Executive Orders 12968, 13526, 13549, 13636, and 13691 which authorize the collection of this information.

In order to begin this process of adjudicating a nominee to participate in the clearance program, Federal nominators will complete the DHS Form 9014, State, Local, Tribal and Private Sector Clearance Request Form, excluding their date of birth, place of birth and social security number. The Federal nominator will sign the form and have it approved by a senior-level official from the corresponding Federal Department or Agency. Before being submitted to the CISA Office of the Chief Security Officer (OCSO) SLTPS Administrator via the CISA Action Task Tracker (CATT), the nominee would have been deemed to have a CISA

mission and meet the requirements and criteria as outlined in Executive Order (E.O.) 13549, the Department of Homeland Security, Classified National Security Information Program for SLTPS Implementing Directive and E.O. 13691, Sec. 4(c), and 32 CFR part 117, Sec. 117.22 of the National Industrial Security Program Operating Manual (NISPOM). The SLTPS Administrator will extract the application from the electronic tracking system and will capture first and last name, clearance level being requested, sector or subsector they are involved in, company, job title, city and state the company is located, work and personal email and work phone number. This information is entered into a SharePoint system in order to track the clearance process and to provide a real-time status of a nominee [and Stakeholders] to Federal nominators and DHS employees who have a need to know. The OCSO Security Specialist is informed that the nominee is ready to start the clearance process and the Personally Identifiable Information (PII) is requested and input into the Electronic Questionnaires for Investigations Processing (e-QIP) system, the Office of Personnel Management's (OPM) secure portal for investigation processing. Once the data is entered into e-QIP, the nominee is provided a password and can access the system and complete the online security questionnaire.

This information is only available to Security Specialists within OCSO working on the program and is maintained in the Integrated Security Management System (ISMS), which is ''owned'' by the OCSO. The two-part PII request process helps minimize the collection of sensitive PII for only those nominees who meet the threshold and are sponsored by CISA.

Number of Respondents

The current estimate of annual respondents is 660, however, based on recent program data, CISA is revising the estimate to 550.

Estimated Time per Response

CISA is choosing to retain the estimate of 10 minutes (0.1667 hours) per response in the current information collection.

Annual Burden Hours

In the current information collection, the estimated annual burden is 110 hours. To estimate the annual burden hours for this collection, the CISA multiplied the number of annual respondents by the estimated time burden of 0.1667 hours (10 minutes), for an estimated annual burden of 91.67 hours (*i.e.,* 0.1667 hours multiplied by 550 annual respondents).

Total Annual Burden

To estimate the total annual burden, CISA multiplied the annual burden of 24,879 hours by the average loaded hourly wage rate computer and information systems managers of $110.66 [1] per hour. Therefore, the total annual burden cost for the collection is $10,144 (91.67 hours × $110.66). For the three-year period for which this collection will be approved, the total cost burden would be $6,603,456 ($2,201,152 annual cost multiplied by 3 years). This is a revised information collection. OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

Title: State, Local, Tribal and Private Sector (SLTPS) Clearance Request Program.

OMB Number: CISA–1670–0013.

Instrument: DHS Form 9014: State, Local, Tribal and Private Sector (SLTPS) Clearance Request Form.

Frequency: ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 550 respondents.

Estimated Time per Respondent: 0.1667 hours (10 minutes).

Total Burden Hours: 91.67 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost: $10,144.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2023–05004 Filed 3–10–23; 8:45 am]

BILLING CODE 9110–9P–P

[1] The above Average Hourly Wage Rate is the May 2021 Bureau of Labor Statistics average wage for Computer and Information Systems Managers (11–3021) of $78.33 times the wage rate benefit multiplier of 1.4127 (to account for fringe benefits) equaling $110.66. The benefits multiplier is estimated by dividing total compensation of $37.24 by salaries and wages of $26.36, based on Employer Cost for Employee Compensation, September 2021, released December 16, 2021 (*https://www.bls.gov/news.release/archives/ecec_12162021.pdf*).

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[Docket No. ICEB–2022–0015]

RIN 1653–ZA35

Employment Authorization for Somali F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Somalia

AGENCY: U.S. Immigration and Customs Enforcement; Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) is suspending certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is Somalia, regardless of country of birth (or individuals having no nationality who last habitually resided in Somalia), and who are experiencing severe economic hardship as a direct result of the current crisis in Somalia. The Secretary is taking action to provide relief to these Somali students who are lawful F–1 nonimmigrant students so the students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 nonimmigrant student status. The U.S. Department of Homeland Security (DHS) will deem an F–1 nonimmigrant student granted employment authorization by means of this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

DATES: This action is effective March 18, 2023, through September 17, 2024.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at *https://www.ice.gov/sevis/.*

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary is exercising authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Somalia, regardless of country of birth (or individuals having no nationality who last habitually resided in Somalia), who are present in the United States in lawful F–1 nonimmigrant student status on the date of publication of this notice, and who are experiencing severe economic hardship as a direct result of the current crisis in Somalia. The original notice, which applied to F–1 nonimmigrant students who met certain criteria, including having been lawfully present in the United States in F–1 nonimmigrant status on September 18, 2021, became effective from September 18, 2021, until March 17, 2023. *See* 86 FR 38739 (July 22, 2021). Effective with this publication, suspension of the employment limitations is available through September 17, 2024, for those who are in lawful F–1 nonimmigrant status on the date of publication of this notice. DHS will deem an F–1 nonimmigrant student granted employment authorization through this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.[1] *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered by this notice?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

(1) Are a citizen of Somalia regardless of country of birth (or an individual having no nationality who last habitually resided in Somalia);

(2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment for F–1 nonimmigrant students;

(4) Are currently maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Somalia.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

Why is DHS taking this action?

DHS is taking action to provide relief to Somali F–1 nonimmigrant students experiencing severe economic hardship due to the current crisis in Somalia. Based on its review of country conditions in Somalia and input received from the U.S. Department of State, DHS is taking action to allow eligible F–1 nonimmigrant students from Somalia (or individuals having no nationality who last habitually resided in Somalia) to request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

Previously, DHS announced temporary relief to F–1 nonimmigrant students whose country of citizenship is Somalia, regardless of country of birth (or individuals having no nationality who last habitually resided in Somalia), and who experienced severe economic hardship because of the humanitarian crisis in Somalia. *See* 86 FR 38739 (July 22, 2021). That notice enabled these F–1 nonimmigrant students to request and obtain employment authorization, work an increased number of hours while school was in session, and reduce their course load, while continuing to maintain their F–1 nonimmigrant student status.

DHS conducted a thorough review of conditions in Somalia. Armed conflict involving state and non-state actors, in combination with interrelated climate, health, food security, and economic challenges, continues to undermine the physical security and wellbeing of the Somali population. Compounding these challenges is the difficulty of providing critical humanitarian aid to affected communities. Internally displaced persons and other vulnerable populations have been particularly impacted.

Al-Shabaab

The insurgent Islamist group al-Shabaab contests government control and continues to conduct an armed insurgency against the Federal Government of Somalia (FGS), resulting in death, injury, and displacement of civilians. Al-Shabaab is a well-organized and well-funded group with control over parts of Somalia.[2] [3] Al-Shabaab controls substantial territory in southern Somalia, planning and conducting terrorist attacks across the country, as well as attacks in northern Kenya and eastern Ethiopia. Al-Shabaab regularly conducts suicide bombings and targeted killings, as well as organized assaults against the Somali National Army (SNA), Somali Police Force (SPF) and the African Union Transition Mission in Somalia (ATMIS) (formerly the African Union Mission in Somalia (AMISOM)).

Al-Shabaab's multiple illegal funding streams, including extortion of local businesses and individuals and facilitation of illicit trades, generates around $100 million per year.[4] Al-Shabaab is regarded as ''al-Qaeda's largest, wealthiest and most deadly affiliate,'' nearly doubling its attacks

[1] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of September 17, 2024, provided the student satisfies the minimum course load requirements in this notice. DHS also considers students who engage in online coursework pursuant to U.S. Immigration and Customs Enforcement (ICE) coronavirus disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *https://www.ice.gov/coronavirus* (last visited Nov. 23, 2022).

[2] Report of the Secretary-General on children and armed conflict in Somalia [S/2022/397], UN Security Council, May 16, 2022, pg. 3–5, available at *https://www.ecoi.net/en/file/local/2076558/N2235204.pdf* (last visited Sept. 7, 2022).

[3] In 2008, the U.S. Government designated Al-Shabaab as a Foreign Terrorist Organization under Section 219 of the Immigration and Nationality Act (as amended) and as a Specially Designated Global Terrorist under Section 1(b) of Executive Order 13224 (as amended). Counter Terrorism Guide—Al-Shabaab, National Counterterrorism Center, available at *https://www.dni.gov/nctc/groups/al_shabaab.html* (last visited Nov. 18, 2022).

[4] Treasury Designates al-Shabaab Financial Facilitators, U.S. Dep't. of the Treasury, Oct. 17, 2022, available at *https://home.treasury.gov/news/press-releases/jy1028* (last visited Nov. 3, 2022).

between 2015 and 2021 and continuing to pose an acute threat.[5] On January 23, an al-Shabaab attack on the Mogadishu mayor's office killed five civilians.[6] On November 27, 2022, Al-Shabaab gunmen killed at least six people in a Mogadishu hotel popular with government officials.[7] One month earlier, Al-Shabaab claimed responsibility for two car bombs in Mogadishu that exploded at the education ministry next to a busy market intersection; President Hassan Sheikh Mohamud stated at the time that the bombings killed at least 100 people and wounded 300,[8] representing Al-Shabaab's deadliest attack in five years.[9] An Al-Shabaab attack on another hotel in Mogadishu in August 2022 killed 21 people and injured 117 others.[10]

Somali security forces do not have the capacity to independently and consistently secure Somalia. When al-Shabaab regains control of towns that had been secured previously by pro-government forces, they have punished residents they suspected of cooperating with U.S. and pro-government forces by conducting public executions including beheadings, stonings, and other deadly forms of retaliation. Somali women and girls are disproportionately exposed to high levels of conflict-related sexual violence.

Al-Shabaab often used suicide bombers, mortars, and IEDs to attack civilian and military targets throughout Somalia. It also killed prominent peace activists, community leaders, clan elders, electoral delegates, and their family members for their roles in peace building, in addition to beheading persons accused of spying for and collaborating with Somali forces and affiliated militias. ISIS-Somalia remains active, planning and carrying out suicide bombings, armed assaults, assassinations, and small arms attacks in the Federal Member State (FMS) of Puntland and in the capital, Mogadishu.

Humanitarian Assistance

More than 7 million Somalis are in need of humanitarian assistance.[11] Compounding this challenge, armed groups deliberately restrict the passage of relief supplies and access by humanitarian organizations through the use of checkpoints, roadblocks, extortion, carjacking, and bureaucratic obstacles.[12] An estimated 740,000 people live in areas controlled by non-state actors, and some districts are regarded as inaccessible.[13]

Vulnerable populations face particular protection challenges. Gender-based violence is underreported but widespread,[14] with Internally Displaced Persons (IDPs) and members of marginalized clans and groups particularly at risk.[15] Al-Shabaab continues to commit gender-based violence, including through child, early, and forced marriages.[16] Children are often subject to recruitment by armed groups.[17]

Health System

Somalia's overall health system, including its disease surveillance system, remains fragmented, under-resourced, and ill-equipped to provide lifesaving and preventative services.[18] It is estimated that at least 6.5 million people need essential healthcare and nutrition services, with malnutrition, disease outbreaks, and conflict continuing to drive increased illness and excess deaths.[19] It is estimated that only 19 percent of districts have adequate healthcare facilities.[20]

Climate Change and Violence

Climate change has intensified competition over declining resources, which in turn exacerbates clan divisions and inter-clan violence.[21] Violence between clan militias has led to civilian casualties, destruction of civilian property, displacement, and obstruction of humanitarian assistance.[22] Somalia is beset by ''a culture of impunity due to clan protection of perpetrators [of abuses] and weak government capacity to hold the guilty to account.''[23]

Alongside conflict and violence, drought and flooding have been primary drivers of displacement, food insecurity, and malnutrition.[24] In March 2022, the UN assessed that, ''Since December 2021, extreme drought conditions have affected about 4.9 million people, with about 719,000 displaced from their homes in search of water, food, and pasture as of March. The emergency is decimating the lives of people whose coping capacities were already eroded by decades of conflict, food shortages, climatic shocks, disease outbreaks, desert locust infestations and the COVID–19 pandemic.''[25]

As of June 2022, more than 80 percent of the country was facing severe to

[5] An attack on a military base in Somalia shows al-Shabab's deadly power, Washington Post, July 17, 2022, available at *https://www.washingtonpost.com/world/2022/07/17/somalia-al-shabab-us-troops/* (last visited Nov. 22, 2022).

[6] At Least Five Injured After Blast at Mayor's Office, Reuters, Jan. 22, 2023, available at *https://www.reuters.com/world/africa/blast-heard-near-mayors-office-somalias-capital-mogadishu-witness-2023-01-22/* (last visited Jan. 22, 2023).

[7] At Least Six Killed in Ongoing Terrorist Siege at Mogadishu Hotel, New York Times, Nov. 28, 2022, available at *https://www.nytimes.com/2022/11/27/world/africa/mogadishu-shabab-hotel.html* (last visited Nov. 28, 2022).

[8] Car bombs at busy Somalia market intersection killed at least 100, president says, Reuters, Oct. 30, 2022, available at *https://www.reuters.com/world/africa/somalia-president-least-100-people-killed-car-bombs-2022-10-30/* (last visited Nov. 1, 2022).

[9] At Least Six Killed in Ongoing Terrorist Siege at Mogadishu Hotel, New York Times, Nov. 28, 2022, available at *https://www.nytimes.com/2022/11/27/world/africa/mogadishu-shabab-hotel.html* (last visited Nov. 28, 2022).

[10] Somali PM Vows Accountability after Deadly Hotel Attack, VOA News, Aug. 22, 2022, available at *https://www.voanews.com/a/somali-pm-vows-accountability-after-deadly-hotel-attack/6712021.html* (last visited Nov. 3, 2022).

[11] Somalia Key Figures, United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), available at *https://m.reliefweb.int/country/216/som?figures-display=all* (last visited Sept. 15, 2022). Estimate as of June 24, 2022.

[12] 2021 Country Reports on Human Rights Practices: Somalia, U.S. Dep't. of State, Apr. 12, 2022, available at *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/somalia/* (last visited Sept. 13, 2022).

[13] Somalia Situation Report, UNOCHA, Aug. 31, 2022, available at *https://reports.unocha.org/en/country/somalia/* (last visited Nov. 28, 2022).

[14] Somalia: Protection Analysis Update (Feb. 2022), Global Protection Cluster/UN High Commissioner for Refugees, Feb. 9, 2022, pg. 4, available at *https://reliefweb.int/report/somalia/somalia-protection-analysis-update-february-2022* (last visited Sept. 7, 2022).

[15] 2021 Country Reports on Human Rights Practices: Somalia, U.S. Dep't. of State, Apr. 12, 2022, available at *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/somalia/* (last visited Sept. 13, 2022).

[16] *Id.*

[17] Report of the Secretary-General on children and armed conflict in Somalia [S/2022/397], UN Security Council, May 16, 2022, pg. 2, available at *https://www.ecoi.net/en/file/local/2076558/N2235204.pdf* (last visited Nov. 18, 2022).

[18] 2022 Somalia Humanitarian Needs Overview, UNOCHA, Oct. 24, 2021, pg. 24, available at *https://reliefweb.int/report/somalia/2022-somalia-humanitarian-needs-overview* (last visited Sept. 13, 2022).

[19] Somalia Complex Crisis—Overview, ACAPS, last updated on Sept. 9, 2022, available at *https://www.acaps.org/country/somalia/crisis/complex-crisis* (last visited Sept. 13, 2022).

[20] *Id.*

[21] 2022 Somalia Humanitarian Needs Overview, UNOCHA, Oct. 24, 2021, pg. 6, available at *https://reliefweb.int/report/somalia/2022-somalia-humanitarian-needs-overview* (last visited Sept. 13, 2022).

[22] Panel of Experts on Somalia, UN Security Council, Oct. 6, 2021, pg. 13, available at *https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/249/27/PDF/N2124927.pdf?OpenElement* (last visited Sept. 7, 2022).

[23] 2021 Country Reports on Human Rights Practices: Somalia, U.S. Dep't. of State, Apr. 12, 2022, available at *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/somalia/* (last visited Sept. 13, 2022).

[24] Somalia: Protection Analysis Update, Global Protection Cluster, UNHCR, Feb. 9, 2022, pg. 4, available at *https://reliefweb.int/report/somalia/somalia-protection-analysis-update-february-2022* (last visited Sept. 12, 2022).

[25] Somalia Humanitarian Bulletin, March 2022, UNOCHA, Apr. 12, 2022, pg. 2, available at *https://reliefweb.int/report/somalia/somalia-humanitarian-bulletin-march-2022* (last visited Sept. 13, 2022).

extreme drought conditions.[26] As of December 2022, Somalia has experienced five consecutive seasons of poor rainfall and is likely to experience a sixth such season from March to June 2023.[27]

Food Insecurity

Malnutrition in Somalia is driven by food insecurity, poor child feeding practices, diseases, and limited access to clean water and sanitation.[28] More than 1.7 million children under the age of five are acutely malnourished.[29] Moreover, conflict and disease outbreaks have exacerbated a spike in food prices.[30]

The UN reports that 7.1 million people, accounting for 45 percent of the country, face at least ''crisis'' levels of food security, of which 2.1 million are experiencing even more serious ''emergency'' shortages that signify acute malnutrition and rising levels of death. Approximately 213,000 people are at the ''catastrophe'' [31] level, representing a 160 percent increase between April and June 2022, and characterized by an extreme lack of food that can result in starvation and death.[32] The situation may further deteriorate if an anticipated decrease in humanitarian assistance for Somalia after March 2023 comes to pass, with the UN and its partners predicting that the number of Somalis facing ''crisis'' levels of food security—or worse—would grow to around 8.3 million between April and June 2023, of which 2.7 million would face ''emergency'' levels and at least 727,000 would face ''catastrophe.'' [33]

As of February 6, 2023, approximately 120 F–1 nonimmigrant students from Somalia are enrolled at SEVP-certified academic institutions in the United States. Given the extent of the current crisis in Somalia, affected students whose primary means of financial support comes from Somalia may need to be exempt from the normal student employment requirements to continue their studies in the United States. The current crisis has made it unfeasible for many students to safely return to Somalia for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.

What is the minimum course load requirement to maintain valid F–1 nonimmigrant status under this notice?

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term. Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). A graduate-level F–1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v). Nothing in this notice affects the applicability of other minimum course load requirements set by the academic institution.

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless their course of study is in an English language study program.[34] *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school in kindergarten through grade 12 or public school in grades 9 through 12 must maintain ''class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,'' as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?

Yes. An F–1 nonimmigrant student who is a Somali citizen, regardless of country of birth (or an individual having no nationality who last habitually resided in Somalia), who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, the F–1 nonimmigrant student must request that their designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information System (SEVIS) record, which the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, will reflect: Approved for more than 20 hours per week of [DSO must insert ''on-campus'' or ''off-campus,'' depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current employment authorization document (EAD) expiration date (if the student is currently authorized for off-campus employment), or the end date of

[26] Somalia Complex Crisis—Overview, ACAPS, last updated on Sept. 9, 2022, available at *https://www.acaps.org/country/somalia/crisis/complex-crisis* (last visited Sept. 13, 2022).

[27] Nearly 8.3 million people across Somalia face Crisis (IPC Phase 3) or worse acute food insecurity outcomes, Famine Early Warning System Network (FEWS NET)/Food Security and Nutrition Analysis Unit (FSNAU)/Integrated Food Security Phase Classification (IPC), Dec. 13, 2022, pg. 1, available at *https://reliefweb.int/report/somalia/nearly-83-million-people-across-somalia-face-crisis-ipc-phase-3-or-worse-acute-food-insecurity-outcomes* (last visited Dec. 13, 2022).

[28] WFP Somalia Country Brief, May 2022, World Food Programme, May 31, 2022, pg. 1, available at *https://reliefweb.int/report/somalia/wfp-somalia-country-brief-may-2022* (last visited Sept. 14, 2022).

[29] Somalia Key Figures, UNOCHA, available at *https://m.reliefweb.int/country/216/som?figures-display=all* (last visited Sept. 15, 2022). Estimate as of Sept. 12, 2022.

[30] Nearly 8.3 million people across Somalia face Crisis (IPC Phase 3) or worse acute food insecurity outcomes, FEWS NET/FSNAU/IPC, Dec. 13, 2022, pg. 1, available at *https://reliefweb.int/report/somalia/nearly-83-million-people-across-somalia-face-crisis-ipc-phase-3-or-worse-acute-food-insecurity-outcomes* (last visited Dec. 13, 2022).

[31] This designation is also referred to as ''Famine'' or ''IPC Phase 5.'' *See Id.*

[32] Horn of Africa braces for 'explosion of child deaths' as hunger crisis deepens, UN News, June 7, 2022, available at *https://news.un.org/en/story/2022/06/1119862* (last visited Sept. 19, 2022).

[33] Nearly 8.3 million people across Somalia face Crisis (IPC Phase 3) or worse acute food insecurity outcomes, FEWS NET/FSNAU/IPC, Dec. 13, 2022, pg. 1, available at *https://reliefweb.int/report/somalia/nearly-83-million-people-across-somalia-face-crisis-ipc-phase-3-or-worse-acute-food-insecurity-outcomes* (last visited Dec. 13, 2022).

[34] DHS considers students who are compliant with ICE Coronavirus Disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such COVID–19 guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, *https://www.ice.gov/coronavirus* (last visited Nov. 23, 2022).

this notice, whichever date comes first].[35]

Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her ''full course of study''?

No. DHS will deem an F–1 nonimmigrant student who receives and comports with the employment authorization permitted under this notice to be engaged in a ''full course of study''[36] for the duration of the student's employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term, and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 nonimmigrant status.

Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible for employment authorization?

No. An F–2 spouse, or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under F–2 nonimmigrant status, consistent with 8 CFR 214.2(f)(15)(i).

Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry into the United States after the effective date of this notice in the Federal Register?

No. The suspension of the applicability of the standard regulatory requirements only applies to certain F–1 nonimmigrant students who meet the following conditions:

(1) Are a citizen of Somalia regardless of country of birth (or an individual having no nationality who last habitually resided in Somalia);

(2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status, under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is SEVP-certified for enrollment of F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Somalia.

An F–1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of the current crisis in Somalia).

Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after the effective date of this notice in the Federal Registerand who needs to obtain a new F–1 visa before returning to the United States to continue an educational program?

Yes. This notice applies to such an F–1 nonimmigrant student, but only if the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I–20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F–1 visa to continue an educational program in the United States.

Does this notice apply to elementary school, middle school, and high school students in F–1 status?

Yes. However, this notice does not by itself reduce the required course load for F–1 nonimmigrant students from Somalia enrolled in kindergarten through grade 12 at a private school, or grades 9 through 12 at a public high school. Such students must maintain the minimum number of hours of class attendance per week prescribed by the academic institution for normal progress toward graduation, as required under 8 CFR214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 nonimmigrant students regardless of educational level. Eligible F–1 nonimmigrant students from Somalia enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session.

On-Campus Employment Authorization

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?

Yes. For an F–1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F–1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session if the DSO has entered the following statement in the remarks field of the student's SEVIS record, which will be reflected on the student's Form I–20: Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].[37]

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the current crisis in Somalia. An F–1 nonimmigrant student authorized by the DSO to engage in on-campus employment by means of this notice does not need to file any

[35] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of September 17, 2024, provided the student satisfies the minimum course load requirements in this notice.

[36] *See* 8 CFR 214.2(f)(6).

[37] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of September 17, 2024, provided the student satisfies the minimum course load requirements in this notice.

applications with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting full-time employment on-campus when school is not in session or during school vacations apply, as described in 8 CFR 214.2(f)(9)(i).

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain his or her F–1 nonimmigrant student status?

Yes. DHS will deem an F–1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a ''full course of study'' [38] for the purpose of maintaining their F–1 nonimmigrant student status for the duration of the on-campus employment, if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if the reduction would not meet the academic institution's minimum course load requirement for continued enrollment.[39]

Off-Campus Employment Authorization

What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For an F–1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 nonimmigrant student status for one full academic year to be eligible for off-campus employment;

(b) The requirement that an F–1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while the school is in session; and (d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a ''full course of study'' [40] for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student's employment authorization if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization for a reduced course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school's minimum course load requirement.[41]

How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the current crisis in Somalia. Filing instructions are located at *https://www.uscis.gov/i-765.*

Fee considerations. Submission of a Form I–765 currently requires payment of a $410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765, Application for Employment Authorization. *See https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver.* The submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). *See* 8 CFR 103.7(c) (Oct. 1, 2020).

Supporting documentation. An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to their DSO:

(1) This employment is necessary to avoid severe economic hardship; and

(2) The hardship is a direct result of the current crisis in Somalia.

If the DSO agrees that the F–1 nonimmigrant student is entitled to receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on that student's Form I–20: Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].[42]

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765 according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the employment authorization document (EAD) from USCIS.

DSO recommendation. In making a recommendation that an F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

(a) The F–1 nonimmigrant student is in good academic standing and is carrying a ''full course of study'' [43] at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a citizen of Somalia, regardless of country of birth (or an individual having no nationality who last habitually resided in Somalia), and is experiencing severe economic hardship as a direct result of the current crisis in Somalia, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply

[38] *See* 8 CFR 214.2(f)(6).

[39] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[40] *See* 8 CFR 214.2(f)(6).

[41] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[42] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of September 17, 2024, provided the student satisfies the minimum course load requirements in this notice.

[43] *See* 8 CFR 214.2(f)(6).

with the reduced course load requirements of this notice and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level;[44] and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the current crisis in Somalia.

Processing. To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes the following documents:

(1) A completed Form I–765 with all applicable supporting evidence;

(2) The required fee or properly documented fee waiver request as defined in 8 CFR 103.7(c) (Oct. 1, 2020); and

(3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.''[45] Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, USCIS will send the student a Form I–766, EAD, as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

Temporary Protected Status (TPS) Considerations

Can an F–1 nonimmigrant student apply for TPS and for benefits under this notice at the same time?

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or for other relief that reduces the student's course load per term and permits an increased number of work hours per week, such as Special Student Relief,[46] under this notice has two options.

Under the first option, the nonimmigrant student may apply for TPS according to the instructions in the USCIS notice designating Somalia for TPS elsewhere in this issue of the **Federal Register**. All TPS applicants must file a Form I–821, Application for Temporary Protected Status, with the appropriate fee (or request a fee waiver). Although not required to do so, if F–1 nonimmigrant students want to obtain a new TPS-related EAD that is valid through September 17, 2024, they must file Form I–765 and pay the Form I–765 fee (or request a fee waiver). An F–1 student who already has a TPS-related EAD will benefit from an automatic extension of the EAD through March 17, 2024, through the **Federal Register** notice extending the designation of Somalia for TPS. After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that their DSO make the required entry in SEVIS, issue an updated Form I–20, as described in this notice, and notate that the nonimmigrant student has been authorized to carry a reduced course load and is working pursuant to a TPS-related EAD. So long as the nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate their nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains TPS, then the student maintains F–1 status and TPS concurrently.

Under the second option, the nonimmigrant student may apply for an EAD under Special Student Relief by filing Form I–765 with the location specified in the filing instructions. At the same time, the F–1 nonimmigrant student may file a separate TPS application, but must submit the Form I–821 according to the instructions provided in the **Federal Register** notice designating Somalia for TPS. If the F–1 nonimmigrant student has already applied for employment authorization under Special Student Relief, they are not required to submit the Form I–765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS EAD in light of certain extensions that may be available to EADs with an A–12 or C–19 category code that are not available to the C–3 category under which Special Student Relief falls. The nonimmigrant student should check the appropriate box when filling out Form I–821 to indicate whether a TPS-related EAD is being requested. Again, so long as the nonimmigrant student maintains the minimum course load described in this notice and does not otherwise violate the student's nonimmigrant status, included as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F–1 nonimmigrant student status while having TPS.

When a student applies simultaneously for TPS and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?

The F–1 nonimmigrant student must maintain normal course load requirements for a ''full course of study''[47] unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (*e.g.,* clock hours for non-traditional academic programs). Once approved for Special Student Relief employment authorization, the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if at the graduate level). *See* 8 CFR 214.2(f)(5)(v), (f)(6), and (f)(9) (i) and (ii).

How does a student who has received a TPS-related EAD then apply for authorization to take a reduced course load under this notice?

There is no further application process with USCIS if a student has been approved for a TPS-related EAD. The F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the current crisis in Somalia. The DSO will then verify and update the student's record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

Can a noncitizen who has been granted TPS apply for reinstatement of F–1 nonimmigrant student status after the noncitizen's F–1 nonimmigrant student status has lapsed?

Yes. Regulations permit certain students who fall out of F–1 nonimmigrant student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). This provision might apply

[44] 8 CFR 214.2(f)(5)(v).

[45] Guidance for direct filing addresses can be found here: *https://www.uscis.gov/i-765-addresses*.

[46] *See* DHS Study in the States, Special Student Relief, *https://studyinthestates.dhs.gov/students/special-student-relief* (last visited Oct. 5, 2022).

[47] *See* 8 CFR 214.2(f)(6).

to students who worked on a TPS-related EAD or dropped their course load before publication of this notice, and therefore fell out of student status. These students must satisfy the criteria set forth in the F–1 nonimmigrant student status reinstatement regulations.

How long will this notice remain in effect?

This notice grants temporary relief through September 17, 2024,[48] to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Somalia. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

Paperwork Reduction Act (PRA)

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from the current crisis in Somalia must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765, consistent with the PRA (OMB Control No. 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

Alejandro Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2023–04737 Filed 3–7–23; 8:45 am]

BILLING CODE 9111–28–P

[48] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of September 17, 2024, provided the student satisfies the minimum course load requirements in this notice. DHS also considers students who engage in online coursework pursuant to U.S. Immigration and Customs Enforcement (ICE) Coronavirus Disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *https://www.ice.gov/coronavirus* (last visited Nov. 23, 2022).

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2738–22; DHS Docket No. USCIS–2013–0006]

RIN 1615–ZB77

Extension and Redesignation of Somalia for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of Temporary Protected Status (TPS) extension and redesignation.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Somalia for Temporary Protected Status (TPS) for 18 months, beginning on March 18, 2023, and ending on September 17, 2024. This extension allows existing TPS beneficiaries to retain TPS through September 17, 2024, so long as they otherwise continue to meet the eligibility requirements for TPS. Existing TPS beneficiaries who wish to extend their status through September 17, 2024, must re-register during the 60-day re-registration period described in this notice. The Secretary is also redesignating Somalia for TPS. The redesignation of Somalia allows additional Somali nationals (and individuals having no nationality who last habitually resided in Somalia) who have been continuously residing in the United States since January 11, 2023, to apply for TPS for the first time during the initial registration period described under the redesignation information in this notice. In addition to demonstrating continuous residence in the United States since January 11, 2023, and meeting other eligibility criteria, applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since March 18, 2023, the effective date of this redesignation of Somalia for TPS.

DATES:

Extension of Designation of Somalia for TPS: The 18-month designation of Somalia for TPS begins on March 18, 2023, and will remain in effect for 18 months, ending on September 17, 2024. The extension impacts existing beneficiaries of TPS.

Re-Registration: The 60-day re-registration period for existing beneficiaries runs from March 13, 2023 through May 12, 2023. (Note: It is important for re-registrants to timely re-register during the registration period and not to wait until their Employment Authorization Documents (EADs) expire, as delaying re-registration could result in gaps in their employment authorization documentation.)

Redesignation of Somalia for TPS: The 18-month redesignation of Somalia for TPS begins on March 18, 2023, and will remain in effect for 18 months, ending on September 17, 2024. The redesignation impacts potential first-time applicants and others who do not currently have TPS.

First-Time Registration: The initial registration period for new applicants under the Somalia TPS redesignation begins on March 13, 2023 and will remain in effect through September 17, 2024.

FOR FURTHER INFORMATION CONTACT: You may contact René Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800–375–5283.

For further information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* You can find specific information about Somalia's TPS designation by selecting ''Somalia'' from the menu on the left side of the TPS web page.

If you have additional questions about TPS, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on

our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *uscis.gov,* or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.*

Further information will also be available at local USCIS offices upon publication of this notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–131—Application for Travel Document
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Purpose of This Action (TPS)

Through this notice, DHS sets forth procedures necessary for nationals of Somalia (or individuals having no nationality who last habitually resided in Somalia) to (1) re-register for TPS and to apply for renewal of their EADs with USCIS or (2) submit an initial registration application under the redesignation and apply for an EAD.

Re-registration is limited to individuals who have previously registered for TPS under the prior designation of Somalia and whose applications have been granted. Failure to re-register properly within the 60-day re-registration period may result in the withdrawal of your TPS following appropriate procedures. *See* 8 CFR 244.14.

For individuals who have already been granted TPS under Somalia's designation, the 60-day re-registration period runs from March 13, 2023 through May 12, 2023. USCIS will issue new EADs with a September 17, 2024 expiration date to eligible Somali TPS beneficiaries who timely re-register and apply for EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive new EADs before their current EADs expire. Accordingly, through this **Federal Register** notice, DHS automatically extends the validity of certain EADs previously issued under the TPS designation of Somalia through March 17, 2024. Therefore, as proof of continued employment authorization through March 17, 2024, TPS beneficiaries can show their EADs that have the notation A12 or C19 under Category and a ''Card Expires'' date of March 17, 2023, or September 17, 2021. This notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have a Somalia TPS application (Form I–821) and/or Application for Employment Authorization (Form I–765) that was still pending as of March 13, 2023 do not need to file either application again. If USCIS approves an individual's pending Form I–821, USCIS will grant the individual TPS through September 17, 2024. Similarly, if USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through the same date. There are currently approximately 430 beneficiaries under Somalia's TPS designation.

Under the redesignation, individuals who currently do not have TPS may submit an initial application during the initial registration period that runs from March 13, 2023 through the full length of the redesignation period, ending September 17, 2024.[1] In addition to demonstrating continuous residence in the United States since January 11, 2023, and meeting other eligibility criteria, initial applicants for TPS under this redesignation must demonstrate that they have been continuously physically present in the United States since March 18, 2023,[2] the effective date of this redesignation of Somalia, before USCIS may grant them TPS. DHS estimates that approximately 2,200 individuals may become newly eligible for TPS under the redesignation of Somalia.

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of DHS discretion.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA sec. 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:
  - ○ The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or
  - ○ Any other lawfully obtained immigration status or category they received while registered for TPS, as

[1] In general, individuals must be given an initial registration period of no less than 180 days to register for TPS, but the Secretary has discretion to provide for a longer registration period. *See* 8 U.S.C. 1254a(c)(1)(A)(iv). In keeping with the humanitarian purpose of TPS and advancing the goal of ensuring ''the Federal Government eliminates . . . barriers that prevent immigrants from accessing government services available to them'' under Executive Order 14012, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,* 86 FR 8277 (Feb. 5, 2021), the Secretary has recently exercised his discretion to provide for TPS initial registration periods that coincide with the full period of a TPS country's initial designation or redesignation. *See, e.g.,* 86 FR 41863 (Aug. 3, 2021) (providing 18-mos. registration period under new TPS designation of Haiti); 86 FR 41986 (Aug. 4, 2021) (''Extension of Initial Registration Periods for New Temporary Protected Status Applicants Under the Designations for Venezuela, Syria and Burma). For the same reasons, the Secretary is similarly exercising his discretion to provide applicants under this TPS designation of Somalia with an 18-month initial registration period.

[2] The ''continuous physical presence date'' (CPP) is the effective date of the most recent TPS designation of the country, which is either the publication date of the designation announcement in the **Federal Register** or such later date as the Secretary may establish. The ''continuous residence date'' (CR) is any date established by the Secretary when a country is designated (or sometimes redesignated) for TPS. *See* INA sec. 244(b)(2)(A), 8 U.S.C. 1254a(b)(2)(A) (effective date of designation); 244(c)(1)(A)(i–ii), 8 U.S.C. 1252a(c)(1)(A)(i–ii) (discussing CR and CPP date requirements).

long as it is still valid beyond the date TPS terminates.

When was Somalia designated for TPS?

Somalia was initially designated for TPS on September 16, 1991, on the basis of extraordinary and temporary conditions that prevented Somali nationals from safely returning. *See Designation of Nationals of Somalia for Temporary Protected Status,* 56 FR 46804 (Sept. 16, 1991). Somalia's designation for TPS has been consecutively extended since its initial designation. Additionally, Somalia was redesignated for TPS in 2001, again based on extraordinary and temporary conditions. *See Extension and Redesignation of Somalia under Temporary Protected Status Program,* 66 FR 46288 (Sept. 4, 2001). In 2012 Somalia was again redesignated for TPS on the basis of extraordinary and temporary conditions and under the additional basis of ongoing armed conflict. *See Extension and Redesignation of Somalia for Temporary Protected Status,* 77 FR 25723 (May 1, 2012). Most recently, DHS extended and redesignated Somalia for 18 months, from September 18, 2021, through March 17, 2023, again on the basis of ongoing armed conflict and extraordinary and temporary conditions. *See Extension and Redesignation of Somalia for Temporary Protected Status,* 86 FR 38744 (July 22, 2021).

What authority does the Secretary have to extend the designation of Somalia for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[3] The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, termination, or extension of a designation. *See* INA sec. 244(b)(5)(A); 8 U.S.C. 1254a(b)(5)(A).[4] The Secretary, in his or her discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA sec. 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state continues to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA sec. 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

What is the Secretary's authority to redesignate Somalia for TPS?

In addition to extending an existing TPS designation, the Secretary, after consultation with appropriate Government agencies, may redesignate a country (or part thereof) for TPS. *See* INA sec. 244(b)(1), 8 U.S.C. 1254a(b)(1); *see also* INA sec. 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that ''the alien has been continuously physically present since the effective date of *the most recent designation of the state*'') (emphasis added).[5]

When the Secretary designates or redesignates a country for TPS, the Secretary also has the discretion to establish the date from which TPS applicants must demonstrate that they have been ''continuously resid[ing]'' in the United States. *See* INA sec. 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii). The Secretary has determined that the ''continuous residence'' date for applicants for TPS under the redesignation of Somalia shall be January 11, 2023. Initial applicants for TPS under this redesignation must also show they have been ''continuously physically present'' in the United States since March 18, 2023, which is the effective date of the Secretary's redesignation of Somalia. *See* INA sec. 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i). For each initial TPS application filed under the redesignation, the final determination of whether the applicant has met the ''continuous physical presence'' requirement cannot be made until March 18, 2023, the effective date of this redesignation for Somalia. However, during the registration period and upon filing of the initial TPS application, USCIS will issue employment authorization documentation if the TPS applicant establishes prima facie eligibility for TPS. *See* 8 CFR 244.5(b).

Why is the Secretary extending the TPS designation for Somalia and simultaneously redesignating Somalia for TPS through September 17, 2024?

DHS has reviewed country conditions in Somalia. Based on the review, including input received from the Department of State (DOS), the Secretary has determined that an 18-month TPS extension is warranted because the ongoing armed conflict and extraordinary and temporary conditions supporting Somalia's TPS designation remain. The Secretary has further determined that redesignating Somalia for TPS under INA sec. 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C) is warranted as is changing the ''continuous residence'' and ''continuous physical presence'' dates that applicants must meet to be eligible for TPS.

DHS conducted a thorough review of conditions in Somalia. Armed conflict involving state and non-state actors, in combination with interrelated climate, health, and food security challenges, continues to undermine the physical security and wellbeing of the Somali population. Compounding these challenges is the difficulty of providing critical humanitarian aid to affected communities. Internally displaced persons (IDPs) and other vulnerable populations have been particularly impacted.

[3] INA sec. 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135. The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. *Id.,* at sec. 244(b)(1).

[4] This issue of judicial review is the subject of litigation. *See, e.g., Ramos* v. *Wolf,* 975 F.3d 872 (9th Cir. 2020), *petition for en banc rehearing* filed Nov. 30, 2020 (No. 18–16981); *Saget* v. *Trump,* 375 F. Supp. 3d 280 (E.D.N.Y. 2019).

[5] The extension and redesignation of TPS for Somalia is one of several instances in which the Secretary and, prior to the establishment of DHS, the Attorney General, have simultaneously extended a country's TPS designation and redesignated the country for TPS. See, *e.g.,* Extension and Redesignation of Haiti for Temporary Protected Status, 76 FR 29000 (May 19, 2011); Extension and Re-designation of Sudan for Temporary Protected Status, 69 FR 60168 (Oct. 7, 2004); Extension of Designation and Re-designation of Liberia under Temporary Protected Status Program, 62 FR 16608 (Apr. 7, 1997).

Armed Conflict

The insurgent Islamist group al-Shabaab contests government control in Somalia and continues to conduct an armed insurgency against the Federal Government of Somalia (FGS), resulting in death, injury, and displacement of civilians.[6 7 8]

Al-Shabaab is well-organized and well-funded armed group with control over parts of Somalia.[9 10] Al-Shabaab controls substantial territory in southern Somalia, planning and conducting terrorist attacks across the country, as well as attacks in northern Kenya and eastern Ethiopia.[11 12 13] Al-Shabaab regularly conducts suicide bombings and targeted killings, as well as organized assaults against the Somali National Army (SNA), Somali Police Force (SPF) and the African Union Transition Mission in Somalia (ATMIS) (formerly the African Union Mission in Somalia (AMISOM)).[14]

Al-Shabaab's multiple illegal funding streams, including extortion of local businesses and individuals and facilitation of illicit trades, generate around $100 million per year.[15] Al-Shabaab is regarded by the Department of Defense as ''al-Qaeda's largest, wealthiest and most deadly affiliate,'' nearly doubling its attacks between 2015 and 2021 and continuing to pose an acute threat.[16] As recently as November 27, 2022, Al-Shabaab gunmen killed at least nine people in a Mogadishu hotel popular with government officials.[17] One month earlier, Al-Shabaab claimed responsibility for two car bombs in Mogadishu that exploded at the education ministry next to a busy market intersection; President Hassan Sheikh Mohamud stated at the time that the bombings killed at least 100 people and wounded 300,[18] representing Al-Shabaab's deadliest attack in five years.[19] An Al-Shabaab attack on another hotel in Mogadishu in August 2022 killed 21 people and injured 117 others.[20]

Somali security forces do not have the capacity to independently and consistently secure Somalia.[21] When al-Shabaab regains control of towns that had been secured previously by pro-government forces, they have punished residents they suspected of cooperating with U.S. and pro-government forces by conducting public executions including beheadings, stonings, and other deadly forms of retaliation.[22] Somali women and girls are disproportionately exposed to high levels of conflict-related sexual violence.[23 24]

Al-Shabaab often used suicide bombers, mortars, and IEDs to attack civilian and military targets throughout Somalia.[25] It also killed prominent peace activists, community leaders, clan elders, electoral delegates, and their family members for their roles in peace building, in addition to beheading persons accused of spying for and collaborating with Somali forces and affiliated militias.[26] ISIS-Somalia remains active, planning and carrying out suicide bombings, armed assaults, assassinations, and small arms attacks in the Federal Member State (FMS) of Puntland and in the capital, Mogadishu.[27]

Extraordinary and Temporary Conditions

Somalia faces complex climate, health, food security, and humanitarian challenges. As of December 2022, more than 7 million Somalis are in need of humanitarian assistance.[28] Compounding this challenge, armed groups deliberately restrict the passage of relief supplies and access by humanitarian organizations through the use of checkpoints, roadblocks, extortion, carjacking, and bureaucratic obstacles.[29]

Approximately 2.9 million people are internally displaced in Somalia ''due to conflict, drought, lack of livelihood opportunities, and forced evictions from

[6] Report of the Secretary-General on children and armed conflict in Somalia [S/2022/397], UN Security Council, May 16, 2022, pg. 3–5, available at *https://www.ecoi.net/en/file/local/2076558/N2235204.pdf.*

[7] National Counterterrorism Center, Counter Terrorism Guide, Terrorist Groups, Al-Shabaab, available at *https://www.dni.gov/nctc/groups/al_shabaab.html* (last visited Feb. 2, 2023)

[8] Claire Klobucista, Jonathan Masters, and Mohammed Aly Sergie, Backgrounder Al-Shabaab, Council of Foreign Relations, Dec. 6, 2022, available at *https://www.cfr.org/backgrounder/al-shabaab* (last visited Feb. 1, 2023).

[9] Report of the Secretary-General on children and armed conflict in Somalia [S/2022/397], UN Security Council, May 16, 2022, pg. 3–5, available at *https://www.ecoi.net/en/file/local/2076558/N2235204.pdf.*

[10] In 2008, the U.S. Government designated Al-Shabaab as a Foreign Terrorist Organization under Section 219 of the Immigration and Nationality Act (as amended) and as a Specially Designated Global Terrorist under Section 1(b) of Executive Order 13224 (as amended). Counter Terrorism Guide—Al-Shabaab, National Counterterrorism Center, available at *https://www.dni.gov/nctc/groups/al_shabaab.html* (last visited Jan. 19, 2023).

[11] Report of the Secretary-General on children and armed conflict in Somalia [S/2022/397], UN Security Council, May 16, 2022, pg. 3–5, available at *https://www.ecoi.net/en/file/local/2076558/N2235204.pdf.*

[12] Media Note, U.S. Dep't. of State, Rewards for Justice—Reward Offer for Information on Maalim Ayman and Other Responsible for 2020 Attack on Manda Bay Airfield in Kenya, Jan. 5, 2023, available at *https://www.state.gov/rewards-for-justice-reward-offer-for-information-on-maalim-ayman-and-others-responsible-for-2020-attack-on-manda-bay-airfield-in-kenya/* (last visited Feb. 1, 2023);

[13] Council on Foreign Relations, 2004–2022 Al-Shabaab in East Africa, available at *https://www.cfr.org/timeline/al-shabaab-east-africa* (last visited Feb. 2, 2023).

[14] Report of the Secretary-General on children and armed conflict in Somalia [S/2022/397], UN Security Council, May 16, 2022, pg. 3–5, available at *https://www.ecoi.net/en/file/local/2076558/N2235204.pdf.*

[15] Treasury Designates al-Shabaab Financial Facilitators, U.S. Dep't. of the Treasury, Oct. 17, 2022, available at *https://home.treasury.gov/news/press-releases/jy1028* (last visited Jan. 19, 2023).

[16] An attack on a military base in Somalia shows al-Shabab's deadly power, Washington Post, July 17, 2022, available at *https://www.washingtonpost.com/world/2022/07/17/somalia-al-shabab-us-troops/* (last visited Jan. 19, 2023).

[17] Nine Civilians Killed in Militant Siege at a Mogadishu Hotel, New York Times, Nov. 28, 2022, available at *https://www.nytimes.com/2022/11/27/world/africa/mogadishu-shabab-hotel.html* (last visited Jan. 19, 2023).

[18] Car bombs at busy Somalia market intersection killed at least 100, president says, Reuters, Oct. 30, 2022, available at *https://www.reuters.com/world/africa/somalia-president-least-100-people-killed-car-bombs-2022-10-30/* (last visited Jan. 19, 2023).

[19] Nine Civilians Killed in Militant Siege at a Mogadishu Hotel, New York Times, Nov. 28, 2022, available at *https://www.nytimes.com/2022/11/27/world/africa/mogadishu-shabab-hotel.html* (last visited Jan. 19, 2023).

[20] Somali PM Vows Accountability after Deadly Hotel Attack, VOA News, Aug. 22, 2022, available at *https://www.voanews.com/a/somali-pm-vows-accountability-after-deadly-hotel-attack/6712021.html* (last visited Jan. 19, 2023).

[21] Integrated Country Strategy: Somalia, U.S. Dep't. of State, Mar. 20, 2022, available at *https://www.state.gov/wp-content/uploads/2022/04/ICS_AF_Somalia_Public.pdf.*

[22] EASO, Country of Origin Information Report, Somalia Targeted profiles, September 2021, available at *https://www.ecoi.net/en/file/local/2060580/2021_09_EASO_COI_Report_Somalia_Targeted_profiles.pdf.*

[23] UNSOM, Women in Somalia Live Through Pain of Displacement and Trauma of Conflict-Related Sexual Violence, June 19, 2022, available at *https://unsom.unmissions.org/women-somalia-live-through-pain-displacement-and-trauma-conflict-related-sexual-violence* (last visited Feb. 2, 2023).

[24] U.S. Dept. of State, 2021 Country Reports on Human Rights Practices: Somalia, Apr. 12, 2022, available at *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/somalia/* (last visited Feb. 2, 2023).

[25] Chiara Torelli, Action on Armed Violence, Hiiran: 30 killed in three Al Shabaab suicide attacks, 14 Jan, Jan. 17, 2023, available at *https://aoav.org.uk/2023/hiiran-30-killed-in-three-al-shabaab-suicide-attacks-14-jan/* (last visited Feb. 2, 2023).

[26] 2021 Country Reports on Human Rights Practices: Somalia, U.S. Dep't. of State, Apr. 12, 2022, available at *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/somalia/* (last visited Feb. 2, 2023).

[27] *Id.*

[28] Somalia Key Figures, United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), available at *https://m.reliefweb.int/country/216/som?figures-display=all* (last visited Jan. 19, 2023).

[29] 2021 Country Reports on Human Rights Practices: Somalia, U.S. Dep't. of State, Apr. 12, 2022, available at *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/somalia/* (last visited Jan. 19, 2023).

their settlements, mostly by landlords.'' [30] [31] Such IDPs face challenging living conditions in crowded, informal settlements with limited access to health services, water, shelter, and food.[32] The majority of IDPs are older persons, women, and children.[33]

Vulnerable populations face particular protection challenges. Gender-based violence is underreported but widespread,[34] with IDPs and members of marginalized clans and groups particularly at risk.[35] Al-Shabaab continues to commit gender-based violence, including through child, early, and forced marriages.[36] Children are often subject to recruitment by armed groups.[37]

Somalia's overall health system, including its disease surveillance system, ''remains fragmented, under-resourced, and ill-equipped to provide lifesaving and preventative services.'' [38] It is estimated that at least 6.5 million people need essential healthcare and nutrition services, with malnutrition, disease outbreaks, and conflict continuing to drive increased illness and excess deaths.[39] It is estimated that only 19% of districts have adequate healthcare facilities.[40]

Climate change has intensified competition over declining resources, which in turn exacerbates clan divisions and inter-clan violence.[41] Violence between clan militias has led to civilian casualties, destruction of civilian property, displacement, and obstruction of humanitarian assistance.[42] Somalia is beset by ''a culture of impunity due to clan protection of perpetrators [of abuses] and weak government capacity to hold the guilty to account.'' [43]

Alongside conflict and violence, drought and flooding have been primary drivers of displacement, food insecurity, and malnutrition.[44] In March 2022 the UN assessed:

> Since December 2021, extreme drought conditions have affected about 4.9 million people, with about 719,000 displaced from their homes in search of water, food, and pasture as of March. The emergency is decimating the lives of people whose coping capacities were already eroded by decades of conflict, food shortages, climatic shocks, disease outbreaks, desert locust infestations and the COVID–19 pandemic.[45]

As of September 2022, more than 80% of the country faced severe to extreme drought conditions.[46] As of December 2022, Somalia has experienced five consecutive seasons of poor rainfall and is likely to experience a sixth such season from March to June 2023.[47]

Malnutrition in Somalia is driven by food insecurity, poor child feeding practices, diseases, and limited access to clean water and sanitation.[48] Nearly 1.8 million children under the age of five are acutely malnourished.[49] Moreover, conflict and disease outbreaks have exacerbated a spike in food prices.[50]

The UN reports that 7.1 million people, accounting for 45 percent of the country, face at least ''crisis'' levels of food security, of which 2.1 million are experiencing even more serious ''emergency'' shortages that signify acute malnutrition and rising levels of death.[51] Approximately 213,000 people are at the ''catastrophe'' [52] level, representing a 160 percent increase between April and June 2022, and characterized by an extreme lack of food that can result in starvation and death.[53] The situation may further deteriorate if an anticipated decrease in humanitarian assistance due to insufficient funding for Somalia after March 2023 comes to pass, with the UN and its partners predicting that the number of Somalis facing ''crisis'' levels of food security—or worse—would grow to around 8.3 million between April and June 2023, of which 2.7 million would face

[30] Somalia Humanitarian Fund Annual Report 2021, UNOCHA, June 30, 2022, pg. 8, available at *https://reliefweb.int/report/somalia/somalia-humanitarian-fund-annual-report-2021* (last visited Jan. 19, 2023).

[31] Internally displaced persons (IDPs) are generally most affected by forced evictions in Mogadishu, Somalia's capital. Generally, these IDPs—fleeing from insecurity and natural disasters in rural areas—establish temporary settlements in abandoned areas in Mogadishu, where they pay rent to ''gatekeepers,'' the de facto managers of these informal settlements. These evictions are linked to rising land and property values, and clan power dynamics among one of the most powerful clans—the Hawiye clans in the Mogadishu area. The combination of these factors has led to forced evictions of IDPs, usually with force and without any prior notice. UnSettlement: Urban displacement in the 21st century, Norwegian Refugee Council/Internal Displacement Monitoring Centre, Nov. 2018, pg. 5–7, available at *https://www.refworld.org/docid/5c17b00f4.html* (last visited Jan. 19, 2023).

[32] Four Challenges Facing Displaced Persons in Somalia, International Organization for Migration, Sept. 13, 2022, available at *https://reliefweb.int/report/somalia/four-challenges-facing-displaced-persons-somalia* (last visited Jan. 19, 2023).

[33] Worsening drought escalated forced evictions in Banadir region, Norwegian Refugee Council, Mar. 14, 2022, pg. 1, available at *https://reliefweb.int/report/somalia/nrc-somalia-brief-worsening-drought-escalates-forced-evictions-banadir-region-somalia* (last visited Sept. 13, 2022).

[34] Somalia: Protection Analysis Update (Feb. 2022), Global Protection Cluster/UN High Commissioner for Refugees, Feb. 9, 2022, pg. 4, available at *https://reliefweb.int/report/somalia/somalia-protection-analysis-update-february-2022* (last visited Sept. 7, 2022).

[35] 2021 Country Reports on Human Rights Practices: Somalia, U.S. Dep't. of State, Apr. 12, 2022, available at *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/somalia/* (last visited Jan. 19, 2023).

[36] *Id.*

[37] Report of the Secretary-General on children and armed conflict in Somalia [S/2022/397], UN Security Council, May 16, 2022, pg. 5, available at *https://www.ecoi.net/en/file/local/2076558/N2235204.pdf*

[38] 2022 Somalia Humanitarian Needs Overview, UNOCHA, Oct. 24, 2021, pg. 25, available at *https://reliefweb.int/report/somalia/2022-somalia-humanitarian-needs-overview* (last visited Jan. 19, 2023).

[39] Somalia Complex Crisis—Overview, ACAPS, last updated on Sept. 9, 2022, available at *https://www.acaps.org/country/somalia/crisis/complex-crisis* (last visited Jan. 19, 2023).

[40] *Id.*

[41] 2022 Somalia Humanitarian Needs Overview, UNOCHA, Oct. 24, 2021, pg. 6, available at *https://reliefweb.int/report/somalia/2022-somalia-humanitarian-needs-overview* (last visited Sept. 13, 2022).

[42] Letter dated 5 October 2021 from the Chair of the Security Council Committee pursuant to resolution 751 (1992) concerning Somalia addressed to the President of the Security Council, UN Security Council, Oct. 6, 2021, pg. 13, available at *https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/249/27/pdf/N2124927.pdf?OpenElement.*

[43] 2021 Country Reports on Human Rights Practices: Somalia, U.S. Dep't. of State, Apr. 12, 2022, available at *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/somalia/* (last visited Jan. 19, 2023).

[44] Somalia: Protection Analysis Update, Global Protection Cluster, UNHCR, Feb. 9, 2022, pg. 4, available at *https://reliefweb.int/report/somalia/somalia-protection-analysis-update-february-2022* (last visited Sept. 12, 2022).

[45] Somalia Humanitarian Bulletin, March 2022, UNOCHA, Apr. 12, 2022, pg. 2, available at *https://reliefweb.int/report/somalia/somalia-humanitarian-bulletin-march-2022* (last visited Sept. 13, 2022).

[46] Somalia Complex Crisis—Overview, ACAPS, last updated on Sept. 9, 2022, available at *https://www.acaps.org/country/somalia/crisis/complex-crisis* (last visited Jan. 19, 2023).

[47] Nearly 8.3 million people across Somalia face Crisis (IPC Phase 3) or worse acute food insecurity outcomes, Famine Early Warning System Network (FEWS NET)/Food Security and Nutrition Analysis Unit (FSNAU)/Integrated Food Security Phase Classification (IPC), Dec. 13, 2022, pg. 1, available at *https://reliefweb.int/report/somalia/nearly-83-million-people-across-somalia-face-crisis-ipc-phase-3-or-worse-acute-food-insecurity-outcomes* (last visited Jan. 19, 2023).

[48] WFP Somalia Country Brief, May 2022, World Food Programme, May 31, 2022, pg. 1, available at *https://reliefweb.int/report/somalia/wfp-somalia-country-brief-may-2022* (last visited Sept. 14, 2022).

[49] Somalia Key Figures, UNOCHA, available at *https://m.reliefweb.int/country/216/som?figures-display=all* (last visited Jan. 19, 2023). Estimate as of Sept. 12, 2022.

[50] Nearly 8.3 million people across Somalia face Crisis (IPC Phase 3) or worse acute food insecurity outcomes, FEWS NET/FSNAU/IPC, Dec. 13, 2022, pg. 1, available at *https://reliefweb.int/report/somalia/nearly-83-million-people-across-somalia-face-crisis-ipc-phase-3-or-worse-acute-food-insecurity-outcomes* (last visited Jan. 19, 2023).

[51] Horn of Africa braces for 'explosion of child deaths' as hunger crisis deepens, UN News, June 7, 2022, available at *https://news.un.org/en/story/2022/06/1119862* (last visited Jan. 19, 2023).

[52] This designation is also referred to as ''Famine'' or ''IPC Phase 5.'' FEWS NET/FSNAU/IPC, *supra* note 37.

[53] Horn of Africa braces for 'explosion of child deaths' as hunger crisis deepens, UN News, June 7, 2022, available at *https://news.un.org/en/story/2022/06/1119862* (last visited Jan. 19, 2023).

''emergency'' levels and at least 727,000 would face ''catastrophe.''[54]

Based upon this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting Somalia's designation for TPS continue to be met. *See* INA sec. 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be an ongoing armed conflict in Somalia and, due to such conflict, requiring the return to Somalia of Somali nationals (or individuals having no nationality who last habitually resided in Somalia) would pose a serious threat to their personal safety. *See* INA sec. 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- There continue to be extraordinary and temporary conditions in Somalia that prevent Somali nationals (or individuals having no nationality who last habitually resided in Somalia) from returning to Somalia in safety, and it is not contrary to the national interest of the United States to permit Somali TPS beneficiaries to remain in the United States temporarily. *See* INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Somalia for TPS should be extended for an 18-month period, beginning on March 18, 2023 and ending on September 17, 2024. *See* INA sec. 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- Due to the conditions described above, Somalia should be simultaneously extended and redesignated for TPS beginning on March 18, 2023 and ending on September 17, 2024. *See* INA sec. 244(b)(1)(A) and (C) and (b)(2), 8 U.S.C. 1254a(b)(1)(A) and (C) and (b)(2).
- For the redesignation, the Secretary has determined that TPS applicants must demonstrate that they have continuously resided in the United States since January 11, 2023.
- TPS applicants must demonstrate that they have been continuously physically present in the United States since March 18, 2023, the effective date of the redesignation of Somalia for TPS.
- There are approximately 430 current Somalia TPS beneficiaries who are expected to be eligible to re-register for TPS under the extension.
- It is estimated that approximately 2,200 additional individuals may be eligible for TPS under the redesignation of Somalia. This population includes Somali nationals in the United States in nonimmigrant status or without lawful immigration status.

Notice of the Designation of Somalia for TPS

By the authority vested in me as Secretary under INA sec. 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Somalia's designation for TPS on the basis of ongoing armed conflict and extraordinary and temporary conditions are met. *See* INA sec. 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A) and INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C). I estimate up to approximately 2,630 individuals may be eligible for TPS under the designation of Somalia. On the basis of this determination, I am simultaneously extending the existing designation of Somalia for TPS for 18 months, beginning on March 18, 2023, and ending on September 17, 2024, and redesignating Somalia for TPS for the same 18-month period. *See* INA sec. 244(b)(1)(A), (b)(1)(C) and (b)(2); 8 U.S.C. 1254a(b)(1)(A), (b)(1)(C), and (b)(2).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Eligibility and Employment Authorization for TPS

Required Application Forms and Application Fees To Register for TPS

To register for TPS based on the designation of Somalia, you must submit a Form I–821, Application for Temporary Protected Status, and pay the filing fee (or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver). You may be required to pay the biometric services fee. If you can demonstrate an inability to pay the biometric services fee, you may request to have the fee waived. Please see additional information under the ''Biometric Services Fee'' section of this notice.

TPS beneficiaries are eligible for an EAD, which proves their authorization to work in the United States. You are not required to submit Form I–765, Application for Employment Authorization, or have an EAD to be granted TPS, but see below for more information if you want an EAD to use as proof that you can work in the United States.

Individuals who have a Somalia TPS application (Form I–821) that was still pending as of March 13, 2023 do not need to file the application again. If USCIS approves an individual's Form I–821, USCIS will grant the individual TPS through September 17, 2024.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1) (Oct. 1, 2020).

How can TPS beneficiaries obtain an Employment Authorization Document (EAD)?

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. TPS beneficiaries are eligible to obtain an EAD, which proves their legal right to work. Those who want to obtain an EAD must file a Form I–765 and pay the Form I–765 fee (or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver). TPS applicants may file this form along with their TPS application, or at a later date, provided their TPS application is still pending or has been approved. Beneficiaries with a Somalia TPS-related Form I–765 that was still pending as of March 13, 2023 do not need to file the application again. If USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through September 17, 2024.

Refiling an Initial TPS Registration Application After Receiving a Denial of a Fee Waiver Request

The fee waiver denial notice will contain specific instructions about resubmitting your application.

Filing Information

USCIS offers the option to applicants for TPS under Somalia's designation to file Form I–821 and related requests for EADs online or by mail. When filing a TPS application, applicants can also request an EAD by submitting a completed Form I–765 with their Form I–821.

Online filing: Form I–821 and I–765 are available for concurrent filing online.[55] To file these forms online, you must first create a USCIS online account.[56] However, if you are requesting a fee waiver, you cannot submit the applications online. You will need to file paper versions of the fee waiver request and the form for which you are requesting the fee waiver.

Mail filing: Mail your application for TPS to the proper address in Table 1.

[54] Nearly 8.3 million people across Somalia face Crisis (IPC Phase 3) or worse acute food insecurity outcomes, FEWS NET/FSNAU/IPC, Dec. 13, 2022, pg. 1, available at *https://reliefweb.int/report/somalia/nearly-83-million-people-across-somalia-face-crisis-ipc-phase-3-or-worse-acute-food-insecurity-outcomes* (last visited Jan. 19, 2023).

[55] Find information about online filing at ''Forms Available to File Online,'' *https://www.uscis.gov/file-online/forms-available-to-file-online.*

[56] *https://myaccount.uscis.gov/users/sign_up.*

Table 1—Mailing Addresses

Mail your completed Form I–821, Application for Temporary Protected Status and Form I–765, Application for Employment Authorization, Form I–912, Request for Fee Waiver, if applicable, and supporting documentation to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are using the U.S. Postal Service (USPS)	USCIS, Attn: TPS Somalia, P.O. Box 6943, Chicago, IL 60680–6943.
You are using FedEx, UPS, or DHL	USCIS, Attn: TPS Somalia (Box 6943), 131 S Dearborn St., 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD, please mail your Form I–765 application to the appropriate mailing address in Table 1. When you are requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us verify your grant of TPS and process your application.

Supporting Documents

The filing instructions on the Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying (*i.e.,* registering) for TPS on the USCIS website at *https://www.uscis.gov/tps* under ''Somalia.''

Travel

TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United States and be authorized to re-enter. If granted, travel authorization gives you permission to leave the United States and return during a specific period. To request travel authorization, you must file Form I–131, Application for Travel Document, available at *https://www.uscis.gov/i-131.* You may file Form I–131 together with your Form I–821 or separately. When filing the Form I–131, you must:

- Select Item Number 1.d. in Part 2 on the Form I–131; and
- Submit the fee for the Form I–131, or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797 for the approved or pending Form I–821.

TABLE 2—MAILING ADDRESSES

If you are . . .	Mail to . . .
Filing Form I–131 together with a Form I–821, Application for Temporary Protected Status.	The address provided in Table 1.
Filing Form I–131 based on a pending or approved Form I–821, and you are using the U.S. Postal Service (USPS): You must include a copy of the receipt notice (Form I–797 or I–797C) showing we accepted or approved your Form I–821.	USCIS, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867.
Filing Form I–131 based on a pending or approved Form I–821, and you are using FedEx, UPS, or DHL: You must include a copy of the receipt notice (Form I–797 or I–797C) showing we accepted or approved your Form I–821.	USCIS, Attn: I–131 TPS, 2501 S State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067.

Biometric Services Fee for TPS

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay the biometric services fee, you may request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *https://www.dhs.gov/publication/dhsuscispia-060-customer-profile-management-service-cpms.*

General Employment-Related Information for TPS Applicants and Their Employers

How can I obtain information on the status of my TPS application and EAD request?

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at *uscis.gov,* or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.* If your Form I–765 has been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at *https://egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Am I eligible to receive an automatic extension of my current EAD through March 17, 2024, through this ***Federal Register*** *notice?*

Yes. Regardless of your country of birth, provided that you currently have a Somalia TPS-based EAD that has the notation A12 or C19 under Category and a ''Card Expires'' date of March 17, 2023, or September 17, 2021, this **Federal Register** notice automatically extends your EAD through March 17, 2024. Although this **Federal Register** notice automatically extends your EAD through March 17, 2024, you must re-register timely for TPS in accordance with the procedures described in this **Federal Register** notice to maintain your TPS and employment authorization.

When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?

You can find the Lists of Acceptable Documents on Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *https://www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *https://www.uscis.gov/I-9Central.* An EAD is an acceptable document under List A. *See* the section ''How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?'' of this **Federal Register** notice for further information. If your EAD states A12 or C19 under Category and has a ''Card Expires'' date of March 17, 2023, or September 17, 2021, it has been extended automatically by virtue of this **Federal Register** notice and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through March 17, 2024, unless your TPS has been withdrawn or your request for TPS has been denied. Your country of birth notated on the EAD does not have to reflect the TPS designated country of Somalia for you to be eligible for this extension.

What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?

Even though we have automatically extended your EAD, your employer is required by law to ask you about your continued employment authorization. Your employer may need to re-inspect your automatically extended EAD to check the ''Card Expires'' date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the Card Expiration date and Category code, your employer should update the EAD expiration date in Section 2 of Form I–9. *See* the section ''What updates should my current employer make to Form I–9 if my EAD has been automatically extended?'' of this **Federal Register** notice for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through March 17, 2024, but you are not required to do so. The last day of the automatic EAD extension is March 17, 2024. Before you start work on March 18, 2024, your employer is required by law to reverify your employment authorization on Form I–9. By that time, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 instructions to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, regardless of whether you have an EAD or work authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through September 17, 2024, then you must file Form I–765, Application for Employment Authorization, and pay the associated fee (unless USCIS grants your fee waiver request).

Can my employer require that I provide any other documentation such as evidence of my status or proof of my Somali citizenship or a Form I–797 showing that I registered for TPS for Form I–9 completion?

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request proof of Somali citizenship or proof of registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document so long as the EAD reasonably appears to be genuine and to relate to you. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?

When using an automatically extended EAD to complete Form I–9 for a new job before March 18, 2024:

1. For Section 1, you should:

a. Check ''An alien authorized to work until'' and enter March 17, 2024, as the ''expiration date''; and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

2. For Section 2, employers should:

a. Determine if the EAD is auto-extended by ensuring it is in category A12 or C19 and has a ''Card Expires'' date of March 17, 2023, or September 17, 2021.

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write March 17, 2024, as the expiration date.

Before the start of work on March 18, 2024, employers must reverify the employee's employment authorization on Form I–9.

What updates should my current employer make to Form I–9 if my EAD has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-inspect your current EAD if they do not have a copy of the EAD on file. Your employer should determine if your EAD is automatically extended by ensuring that it contains Category A12 or C19 and has a ''Card Expires'' date of March 17, 2023, or September 17, 2021. Your employer may not rely on the country of birth listed on the card to determine whether you are eligible for this extension.

If your employer determines that USCIS has automatically extended your EAD, your employer should update Section 2 of your previously completed Form I–9 as follows:

1. Write EAD EXT and March 17, 2024, as the last day of the automatic extension in the Additional Information field; and
2. Initial and date the correction.

Note: This is not considered a reverification. Employers do not reverify the employee until either the automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By March 18, 2024, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization on Form I–9.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by entering the number from the Document Number field on Form I–9 into the document number field in E-Verify. Employers should enter March 17, 2024, as the expiration date for an EAD that has been extended under this **Federal Register** notice.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?

E-Verify automated the verification process for TPS-related EADs that are automatically extended. If you have employees who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. Before this employee starts work on March 18, 2024, you must reverify their employment authorization on Form I–9. Employers may not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls in English, Spanish and many other languages. Employees or job applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of Tentative Nonconfirmation (mismatch) must promptly inform employees of the mismatch and give such employees an opportunity to take action to resolve the mismatch. A mismatch means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a mismatch while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *https://www.justice.gov/IER* and the USCIS and E-Verify websites at *https://www.uscis.gov/i-9-central* and *https://www.e-verify.gov.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, if you present an automatically extended EAD referenced in this **Federal Register** notice, you do not need to show any other document, such as a Form I–797C, Notice of Action reflecting receipt of a Form I–765 EAD renewal application or this **Federal Register** notice, to prove that you qualify for this extension. While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary, show you are authorized to work based on TPS or other status, or that may be used by DHS to determine if you have TPS or another immigration status. Examples of such documents are:

- Your current EAD with a TPS category code of A12 or C19, even if your country of birth noted on the EAD does not reflect the TPS designated country of Somalia;
- Your Form I–94, Arrival/Departure Record;
- Your Form I–797, Notice of Action, reflecting approval of your Form I–765; or
- Form I–797 or Form I–797C, Notice of Action, reflecting approval or receipt of a past or current Form I–821.

Check with the government agency requesting documentation regarding which document(s) the agency will accept. Some state and local government agencies use the SAVE program to confirm the current immigration status of applicants for public benefits.

While SAVE can verify that an individual has TPS, each agency's procedures govern whether they will accept an unexpired EAD, Form I–797, Form I–797C, or Form I–94, Arrival/Departure Record. If an agency accepts the type of TPS-related document you

present, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

a. Give the agency a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your A-number, USCIS number or Form I–94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at *https://save.uscis.gov/casecheck/.* CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (A-number, USCIS number, or Form I–94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, *https://www.uscis.gov/save,* has detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6359–N–01]

Administrative Guidelines: Subsidy Layering Review for Project-Based Vouchers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice provides updated Administrative Guidelines (Guidelines) and requirements for Project-Based Voucher (PBV) Subsidy Layering Reviews (SLRs) and SLR requirements for Mixed-Finance projects that may or may not include PBV assistance. This updated notice provides transparency on HUD's expectations regarding cash flow, debt coverage ratios, net operating income, operating expense trending requirements, and expands guidance related to expense coverage ratios, when projects do not have hard debt. This notice also introduces a new mailbox (*PBVSLRs@hud.gov*) for SLRs requests to be performed by HUD HQ, and for SLR certifications and supporting documentation for SLRs the Housing Credit Agencies (HCAs) completed. Finally, the guidance expands the delegation of SLRs to HCAs to cases where PBV assistance is combined with other government assistance. Previously, the delegation only covered cases that included Low-Income Housing Tax Credits (LIHTCs). Otherwise SLR cases had to be completed by HUD (see overview chart in Section IV).

FOR FURTHER INFORMATION CONTACT: Miguel A. Fontanez Sanchez, Director, Housing Voucher Financial Management Division, telephone number 202–402–4212 or Belinda Bly, Supervisor, Urban Revitalization Division, telephone number 202–402–4104 (neither are toll free numbers). Addresses for both: c/o Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410. 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.*

SUPPLEMENTARY INFORMATION:

I. Background

In support of HUD's mission to create quality affordable housing, HUD provides funding assistance to incentivize affordable housing development. Subsidy layering reviews (SLRs) are undertaken to ensure the amount of assistance provided by HUD is not more than necessary to make the PBV project feasible in consideration of all other government assistance. SLRs prevent excessive public assistance that could result when a development proposes combining (layering) the HAP subsidy from the PBV program with other public assistance from Federal, State, or local agencies, including assistance through tax concessions or credits.

SLRs for PBV assistance are required pursuant to Section 8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)); Section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA); and Section 102 of the Department of Housing and Urban Development Reform Act of 1989. SLRs are only for proposed PBV new construction and rehabilitation projects as defined in 24 CFR 983.3. Under the current PBV regulations at 24 CFR 983.55(b), the SLR must be completed prior to execution of the Agreement to Enter Into a Housing Assistance Payments Contract (AHAP).

SLR requirements are not applicable to existing housing.[1] PBV regulations at 24 CFR 983.3 define existing housing as units that already exist on the proposal selection date that substantially comply with Housing Quality Standards (HQS) on that date. (The units must fully comply with the HQS before execution of the HAP contract.) In addition, no SLR is required when PBV is the only government assistance provided to a project.

Pursuant to 24 CFR 983.55, public housing agencies (PHAs) must submit a request for an SLR for a proposed PBV project when the project includes other government assistance. HUD can perform the SLRs in all cases, and prior to issuance of this notice, the Department had delegated SLR authority to participating Housing Credit Agencies (HCAs) only when assistance included LIHTCs. This Notice expands the option to delegate SLR authority to HCAs for proposed PBV projects when PBV assistance is combined with other governmental assistance even if no LIHTCs are included.[2]

In cases where PBV projects do not include LIHTCs, but there is a participating HCA in the project's jurisdiction, the HUD Field Office will ask the HCA whether they can perform the SLR. However, the PHAs may request that the HUD HQ perform the SLR. If PHAs do not request that HUD HQ perform the SLR, the HUD Field

[1] Section 2835(a)(1)(F) of Housing and Economic Recovery Act of 2008 (Pub. L. 110–289), enacted July 30, 2008, does not require subsidy layering review for existing housing.

[2] Pursuant to the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), as amended by the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233, approved April 4, 1994) added a ''Subsidy Layering Review'' provision at 42 U.S.C. 3545.

Office will ask the HCA first, but if the participating HCA is not available to perform the SLR, the HUD Field Office will refer the case to HUD HQ to perform the SLR. HUD recommends that PHAs communicate in advance with the participating HCAs (and/or HUD Field Offices) about the upcoming PBV projects that do not include LIHTCs so HCAs can confirm whether they can perform the SLRs.

II. Subsidy Layering Review

A. Definitions

Housing Credit Agency: For purposes of this notice, an HCA is a state housing finance agency or other state agency defined by Section 42 of the Internal Revenue Code of 1986. HCAs are sometimes referred to by other names, such as State Housing Finance Agencies or State Housing Corporation. A participating jurisdiction under HUD's HOME Investment Partnerships program (see 24 CFR part 92) may also serve as an HCA.

Mixed-finance development: Development or modernization of public housing pursuant to 24 CFR 905 Subpart F, where public housing units are owned by an entity other than a PHA.

Other government assistance: Any loan, grant, guarantee, insurance, payment, rebate, subsidy, tax credit, tax benefit, or any other form of direct or indirect assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof.

B. Requesting a SLR for a PBV Award

When a PHA selects a project that is either new construction or rehabilitation, as defined in 24 CFR 983.3, for a PBV award, and the project will include forms of government assistance other than PBVs, the PHA must request an SLR. PHAs request an SLR through their local HUD Field Office or, if eligible, through a participating HCA. A list of participating HCAs is posted and updated periodically on the Housing Voucher Financial Management Division (FMD) website, found at: *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fmd.* The participating HCA may charge a fee to perform the SLR, which the PHA may pay using Administrative Fees or Administrative Fee reserves.

The PHA is responsible for collecting all required documentation for the SLR from the project owner. A list of required documentation is included in Appendix A. If after the initial submission new information becomes available, the PHA is responsible for submitting updated information to HUD or the HCA. The PHA maintains a project file with a complete set of the required documents. As part of the project selection process and application for PBVs, the project owner must disclose all HUD and/or other Federal, State, or local government assistance committed to the project, as well as other government assistance, using Form HUD 2880 (even if no other government assistance is received or is anticipated). If PBV is the only government assistance, an SLR is not required. Whether the PHA or HCA performs the SLR, the PHA must confirm that no form of disclosed assistance renders the project ineligible for PBV assistance and does not violate 24 CFR 983.54.

The owner must inform the PHA if any information changes during or after the application process, either by the addition or deletion of other government assistance. The project owner must provide revised information to correct the earlier submissions to reflect the new information. If at any time during or after the application process, the owner receives supplemental HUD or new government assistance for the project that results in changes in project financing, or changes in the number of PBV units, the owner must submit such changes to the PHA and the PHA must notify HUD or the HCA .[3] The SLR application should not be submitted to HUD until all financing of the project has firm commitments from all lenders. The AHAP requires that the owner disclose to the PHA information regarding any related assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is made available or expected to be made available with respect to the contract units.

The PHA may not enter into the AHAP with the owner until the environmental review is completed and the PHA has received the environmental approval pursuant to 24 CFR 983.153(b). At the time of initial submission of the SLR request, the PHA submits evidence that a request for a 24 CFR part 58 review is submitted to the responsible entity, or a 24 CFR part 50 review is submitted to the Field Office.

C. SLR Analysis and Safe Harbor Standards

When undertaking an SLR, HUD reviews both the development and operating costs of a project to determine whether costs are within a reasonable range, taking into consideration the project's size, characteristics, location, costs, financing, and risk factors. Costs that fall within acceptable safe harbor standards, as identified below, may move forward without further justification. If costs exceed safe harbor standards, then additional justification and documentation are required to justify the costs based on risk factors, and HUD approval is required.

If the review is by an HCA, project costs exceeding the safe harbor standards must be consistent with the HCA's published qualified allocation plan.

(A) *Development Standards:*

i. *General Contractor Fees:* The safe harbor standard is based on hard construction costs. The maximum allowable combined contractor fee is fourteen percent (14%) of the total for hard construction costs. For example, if construction costs are $100,000, the safe harbor amount is $14,000:

- *Builder's General Requirements: 6% of construction contract amount*
- *Builder's Overhead: 2% of construction contract amount*
- *Builder's Profit: 6% of construction contract amount*

ii. *Developer Fee:* The safe harbor standard is a maximum of 15 percent. For projects combining public housing units and PBV units in a Mixed-Finance project, safe harbors are 9 percent, requiring no justification, above 9 percent and up to 12 percent, may be approved with justification. Fees over 12 percent may be approved if the PHA receives the amount over 12 percent and it is restricted for project costs or future phases as described in the ''Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development,'' dated April 9, 2003, or any successor document. See Section D on Mixed Finance Projects below.

(B) *Operating Standards:* The maximum initial term for a PBV HAP contract is 20 years pursuant to Section 8(o)(13)(F) of the 1937 Housing Act as amended by HOTMA, although the initial terms for other funding sources may be less. SLR requests must include an operating pro forma that reflects each year of the HAP contract initial term. All assumptions for income, expenses and debt must be clearly identified. Both the Debt Coverage Ratio (DCR) and cash flow are analyzed on a year-by-year basis. If a project has no permanent debt (*e.g.,* Grants), an Expense Coverage Ratio will be analyzed.

i. *Debt Coverage Ratio:* HUD and HCAs analyze the PBV development's

[3] 24 CFR 4.11.

projected DCR both on a yearly basis and trended over the term of the proposed subsidy period as an indicator of overall project health. As a HUD metric for PBV purposes, the minimum DCR is 1.10 and the maximum is 1.45. The DCR for each year is determined by dividing the net operating income for that year by the amount of the debt service for that year. Factors such as operating cost increases, rent increases, project size, unit and income mix, and vacancy rates affect net operating income. Therefore, a trending analysis is also used to evaluate the DCR over time and to determine whether the amount of assistance is excessive. HUD recognizes that some projects may have higher upfront DCRs since owners may frontload debt service to free up cash flow later in the project period for higher anticipated operating expenses, or that some projects may have higher DCRs in later years due to planned changes in financing costs, interest rates, or partnership transfers. If a project has an overall trending DCR outside the 1.10 to 1.45 range, the project may have too much government assistance. If a project DCR trends outside the range for an individual year, but has an overall trending DCR within the range, HUD will require justifications from the owner or PHA to understand the project's assumptions and yearly deviations. If a project has no hard debt, it must demonstrate an Expense Coverage Ratio (Gross Income divided by Total Operating Expenses) of no less than 1.10 and no higher than 1.45.

- Net operating income is defined as total operating income minus total operating expenses. The net operating income for a project must cover all repayable debt over the life of the HAP contract.
- Operating expenses should be trended at a consistent fixed rate between 1 percent and 3 percent per year for the first 5 years and 3 percent thereafter. Justification for increases above 3 percent must be provided.
- Rent increases should be trended yearly at a consistent fixed rate between 2 percent and 3 percent per year. Justification is required for increases outside this range.
- Vacancy rates must not exceed 7 percent.
- Debt service is defined as the funds required to make payments on all non-forgivable loans, including any existing debt on the property. Debt service does not include forgivable/soft loans, non-repayable grants, non-repayable Federal, State, or local assistance, deferred developer fees, financing fees, asset fees, partnership fees, investor fees, compliance fees, management fees, capital contributions, tax concessions, or tax credits.

If the projected DCR remains between 1.10 and 1.45 during the initial term of the HAP contract, then it is assumed the project has enough cash flow to pay operating expenses and amortized debt, and that the amount of government assistance is not excessive. HUD will require adjustments if the projected DCR or Expense Coverage Ratio in any one year falls below 1.10 and continues to remain below 1.10 for a series of subsequent years, as cash flow would not be enough to ensure stable operations. Likewise, HUD will require adjustments if the projected DCR exceeds the maximum of 1.45 in any one year and continues to remain above 1.45 for a series of subsequent years.

ii. *Cash Flow:* For any given year of the project's operating pro forma, cash flow may not exceed ten percent (10%) of total operating expenses. Cash flow is defined as net operating income minus all required debt service.

- If all or a portion of the developer fee has been deferred and is owed, the face value amount of the deferred developer fee may be deducted from cash flow. Accrued interest on the deferred fee may not be deducted.
- Operational and replacement reserves may be deducted from cash flow when reserves are adjusted by a consistent amount each year.
- No further adjustments to cash flow are permitted beyond deferred developer fees, operational reserve contributions and replacement reserve contributions.

If in any given year the annual cash flow is greater than ten percent of total operating expenses and it remains above 10 percent, it is assumed the cash generated from the government assistance is greater than is necessary to make the project feasible. Therefore, adjustments must be made by the project owner to reduce cash flow to 10 percent or less of operating expenses. If the owner declines, HUD will reduce PBV rents or the number of PBVs, so that the project complies with the 10 percent requirement.

D. Requesting a SLR for a Mixed-Finance Project

For Mixed-Finance projects that also include PBVs, the SLR is handled as part of the Mixed-Finance project review process without a separate PBV SLR review. SLRs for Mixed-Finance projects are only done by HUD and may not be done by an HCA. Mixed-Finance reviews are done by HUD's Office of Public Housing Investments (OPHI) at HUD Headquarters. This provision also applies to Mixed-Finance projects with PBVs that are undertaken as part of the Choice Neighborhoods Grant Program, as well as Choice Neighborhoods projects that have PBVs, but no public housing. This includes MTW local nontraditional development (LNTD) proposals. OPHI prepares the SLR as part of the project review process without a separate PBV SLR review.

As it relates to the PBVs, Mixed-Finance projects must comply with the SLR standards identified above in the Notice. In addition to this review, the project will also be reviewed to assure compliance with the provisions of 24 CFR 905 Subpart F, and other applicable guidance, including the following:

- The ''Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development,'' dated April 9, 2003, or any successor document.
- Total Development Cost (TDC) and Housing Construction Cost (HCC) limits imposed on the project, pursuant to HUD Notice PIH–2011–38 or successor notice.
- The HUD Pro Rata Test, which assures that the proportion of HUD public housing funds committed to development of the project does not exceed the proportion of public housing units in the project. For example, if there are 120 units in the project and 50 are public housing, 42 percent of the units are public housing. Therefore, the amount of public housing funds contributed to the development of the project may not exceed 42 percent of the development budget, including hard and soft costs.
- HUD will review the amount of LIHTC equity to be invested in the project to ensure that the sale of LIHTCs results in an amount of net tax credit equity that is consistent with amounts generally contributed by investors to similar projects under similar market conditions, and that the amount is not less than 51 cents for each dollar of tax credit allocation awarded to a project. If the project receives 51 cents or less of LIHTC equity or does not receive a market rate of equity, it is subject to additional review to reassess the project's fees and costs.

E. SLR Outcome

(A) *HUD:* If HUD completes the SLR and determines the PBV assistance complies with the standards set in this Notice, where the PBV assistance will not result in excessive government subsidy, HUD will certify compliance pursuant to 24 CFR 4.13 and the local HUD Field Office will notify the PHA in writing.

If HUD completes the SLR and determines that the amount of

government subsidy, including the PBV assistance, is excessive, HUD notifies the PHA. The notification includes a recommendation to reduce the amount of PBV assistance or a determination that PBV assistance cannot be provided. Once the PHA receives HUD's decision, the PHA must notify the owner in writing of the outcome and work with the owner to restructure, as needed. Revised materials must then be resubmitted to the HUD Field Office for review.

(B) *HCA:* If an HCA completes the SLR and determines that PBV assistance complies with the above standards of this notice and does not result in excessive government subsidy, the HCA must notify the PHA and submit a certification to HUD at *PBVSLRs@hud.gov* with a copy to the Director of the local HUD Office of Public Housing (*https://www.hud.gov/program_offices/public_indian_housing/about/field_office*) stating that the PBV assistance to be provided is in accordance with HUD SLR guidelines in this Notice and that a determination has been made that it does not result in excessive government subsidy. The AHAP/HAP contract may then be executed if the environmental approval is received. If the SLR is performed by an HCA, subsequent approval of the SLR by HUD is not required. The HCA certification must include the documents outlined in Section III. See Appendix C for a sample HCA certification letter and Appendix A for required information.

If the HCA SLR determines the public assistance amount is excessive, the HCA must notify HUD, in writing, with a copy to the PHA. The notification will include either a recommendation to reduce the amount of PBV assistance or the amount of LIHTC allocation or a determination that PBV assistance cannot be provided. HUD will consult with the HCA and the PHA prior to issuing a final determination to adopt the HCA's recommendation or to revise it. The PHA must notify the owner in writing of the outcome and work with the owner to restructure, as needed. Revised materials must then be resubmitted to the HCA and the HUD Field Office for review.

When a proposal for PBV assistance is contemporaneous with the application for or award of LIHTCs or other government approved funds and state resources, the required SLR may be fulfilled by the HCA (in accordance with Section 42(m)(2) of the Internal Revenue Code (IRC)) if such review substantially complies with the HUD SLR requirements and guidelines.

(C) *Mixed-Finance Projects:* If HUD completes the SLR and determines the PBV assistance and other public housing assistance complies with the above standards of this Notice for Mixed-Finance projects and thus does not result in excessive government subsidy, HUD will certify compliance pursuant to 24 CFR 4.13 and notify the PHA.

For projects that fail to comply, HUD will notify the PHA, which must (i) work with the owner to restructure the project so it complies with the above standards for Mixed-Finance projects and resubmit the revised documentation to HUD for approval, or (ii) provide sufficient justification to HUD to allow HUD to approve a variation(s) from the above standards.

F. SLR Timing

In accordance with program regulations at 24 CFR 983.55, a PHA may not execute an AHAP contract until after the SLR is completed and approved by HUD or the HCA. The AHAP also may not be executed until there is a completed environmental review (ER) and written approval by the responsible entity or HUD, pursuant to 24 CFR part 50 or part 58 and PIH Notice 2016–22. The local HUD Field Office must receive the completed SLR and either approve the Request for Release of Funds or complete a part 50 environmental review prior to notifying the PHA that it may execute the AHAP. The PHA may request an SLR and environmental review simultaneously. The Field Office confirms to the FMD and/or the HCA that the ER process is complete.

If the owner reports to the PHA the addition of any other government assistance before or during the AHAP contract when no SLR was initially required because the project had not received and did not anticipate receiving other government assistance, then an SLR is required to be requested by the PHA at the time of the owner's report.

III. Housing Credit Agency Participation and Certification

State HCAs are state-chartered authorities established to assist and meet the affordable housing needs of their states' residents. Housing Credits (LIHTC, Historic Tax Credits, etc.), Housing Bonds, and HOME Investment Partnerships (HOME) are the federally authorized programs at the center of HCA activity within the states. Through these programs and other Federal and State resources, HCAs have initiated hundreds of housing programs, rental, special needs housing and even homeownership. Prior to issuance of this notice, HUD had delegated SLRs to authorized HCAs (that submitted an intent of participation to HUD for approval) for proposed PBV projects that include LIHTCs as part of the proposed financial assistance. (HCAs were ordinarily designated for the purpose of allocating and administering the LIHTC program under IRC Section 42). HUD is herewith expanding the authority to participating HCAs to conduct SLRs in cases where LIHTCs are not included, but other government assistance is included. Currently 31 states have a HUD-approved HCA; the remaining states may seek HUD approval to conduct SLRs for PBV projects by submitting a letter to HUD notifying HUD of their intent to participate. Appendix B contains a sample letter.

Pursuant to the requirements outlined herein, as well as the Memorandum Of Understanding (MOU) between participating HCAs and HUD, HCAs are required to provide notification to the FMD through the FMD mailbox of any SLRs approved on HUD's behalf by no later than 30 days from the date of authorization. Notifications of approval must contain the following documentation:

- Copy of the Signed HCA Certification as shown in Appendix C
- The HCA's Internal Recommendation and Sign-off
- The Developer's Disclosure of Sources and Uses of Funds
- The Developer's Operating Pro Forma Considered
- Copy of the PBV Commitment/Award Letter
- HUD Form 2880, and
- Rent Information and Project Summary. The information on these fields is collected for reporting purposes only.
  - a. Project Name and Address
  - b. PHA name and code
  - c. Field Office name and code
  - d. HCA Name
  - e. *PBV Type:* Rental Assistance Demonstration (RAD), Veterans Assistance and Supportive Housing (VASH), and/or Regular
  - f. *Tenant type:* Elderly, Disabled, Homeless, Low-Income Families, and/or Veteran.
  - g. Is the Project New Construction or Rehabilitation?
  - h. Amount Per Dollar of Syndication Proceed
  - i. Number of PBV Units Approved by Bedroom Size
  - j. Debt Coverage Ratio or Expense Coverage Ratio (if applicable):____
  - k. Project meets Cash Flow Criteria (Y/N)

IV. Overview Chart

The following chart summarizes the types of projects that require an SLR, the entity authorized to perform the SLR and the required certification. 102(d) Certification is the owner's certification of no additional government funding using form HUD 2880.

Type of project and scenarios	SLR reviewer	102(d) certification required?
PBV subsidy without LIHTC. However, project is new construction or rehabilitation, as defined in 24 CFR 983.3, with 2 or more forms of other government assistance.	HCA or HUD *	If by HCA, certification not required. Otherwise, HUD certifies.
PBV subsidy with LIHTC, new construction or rehabilitated project.	HCA or HUD	If by HCA, certification not required. Otherwise, HUD certifies.
PBV existing housing, as defined in 24 CFR 983.3	No SLR required	No.
PBV new construction or rehabilitated housing, but PBV is the only form of government assistance.	No SLR required	No.
Mixed-finance projects, with or without LIHTC, with or without PBV, with other forms of government assistance.	HUD	Yes.

* PHAs may request that HUD perform the SLR if the project does not include LIHTCs. If the PHA does not request that HUD perform the SLR, the Field Office will refer the SLR request to a participating HCA.

V. Monitoring

HUD performs quality control reviews of SLRs performed by participating HCAs by examining the following:

- If all required document and materials are available to the reviewer
- If values are correctly determined within the approvable range
- If values are above safe harbor standards
- If documentation was provided to justify higher costs
- If the subsidy was reduced correctly (if applicable)

If any required documentation is not provided, or any portion of the review is performed incorrectly, HUD requires appropriate corrective action. When an SLR is performed by an HCA, subsequent approval of the SLR by HUD is not required.

VI. Paperwork Reduction Act

The information collection requirements contained in this notice are currently approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) assigned OMB control numbers 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dominique Blom,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A: PHA Submissions

PHAs are responsible for collecting information from project owners and assembling it in an SLR request submitted to the local HUD Public Housing Field Office or HCA. SLR requests must contain the following information. Assembly using a binder is recommended. Incomplete submissions will be returned.

Required elements of an SLR application & checklist	Check
1. *Subsidy Layering Review request memorandum:* Clearly identify the PHA, the PHA number, the Field Office number, the project's name, the project's total number of units, and the number of PBV units requested. For a sample memorandum see Attachment 1 of PIH Notice 2013–11 or newer version superseding it.	
2. *Project Description:* Short narrative identifying ownership, type of activity (rehabilitation or new construction), location (including county), the project's total number of units, number of PBV units requested, PBV type (RAD, VASH, regular), utility allowances, bedroom distributions, supportive services (if applicable) and residential population (participants experiencing homelessness, veteran, elderly, low-income families). The narrative should also identify any exceptions applicable to the project (*e.g.*, number of PBV exceeding the Project Cap). The information on item 2 is collected for reporting purposes only.	
3. *Accounting Statement of Sources and Uses of Funds:* Identifying each source and indicate type (loan, grant, syndication proceeds, contributed equity). Sources generally include only permanent financing and grants. If interim financing or a construction loan is proposed, provide details in project description. Separately identify detailed uses, avoiding broad categories such as ''soft costs.'' Under acquisition costs, identify purchase price separately from related costs such as appraisal, survey, title, recording and legal fees. Include separate line items representing construction contract amount, builder's general requirements, builder's overhead, builder's profit, and total project costs. [Complete HUD Form 50156].	
4. *Description of funding sources:* Loans including principal, interest rate, amortization, term, and any accrual, deferral, balloon, or forgiveness provisions. Describe any lender, grantor, or syndicator requirements for reserves or escrows requirements. Describe if a lender receives a portion of the net cash flow, either as additional debt service or in addition to debt service. Identify the amount of LIHTC and include IRS form 8609.	
5. *Commitment Letters:* Lenders and other funding sources evidence their commitment to provide funding and disclose significant terms. Signed commitment letters, conditional commitment letters, loan agreements and grant agreements meet this requirement. However, proposal letters and letters of intent or interest do not meet this requirement.	
6. *Developer's Commitment Letter:* Delineating any arrangements, contributions, donations, significant terms, or transfer of funds from the developer and/or participating partners such as deferred developer's fees, cash contributions, land donations and equity investments.	
7. *HOME Commitment Letter:* (When applicable) Signed document clearly identifying requirements of the HOME designated units and intended rents.	
8. *Supportive Service Commitment:* (When applicable) A signed Memorandum of Understanding that describes the type of services to be provided, frequency, terms of service and resident eligibility.	
9. *Appraisal Report:* Based on the ''as is'' value of the property, before construction or rehabilitation, and without consideration of any financial implications of tax credits or project-based voucher assistance. An appraisal establishing value after the property is built or rehabilitated is not acceptable unless it also includes an ''as is'' valuation. The appraisal date must be within eighteen months of the SLR submission.	

Required elements of an SLR application & checklist	Check
10. *Completed HUD Form 50156:* The form must include the Operating Pro Forma, construction and permanent budget, projected rental, commercial, and miscellaneous gross income, vacancy loss, operating expenses, debt service, operational reserves contributions, replacement reserve contributions, cash flow projections, debt service ratios; as well as income and expenses trended at a consistent percentage.	
11. *Low-Income Housing Tax Credit Allocation Letter:* Issued by the authorized tax credit allocation agency, identifying the amount of LIHTCs reserved for the project.	
12. *Historic Tax Credit Letter:* Issued by an authorized historic credit agency, disclosing the estimated historic tax credit amount awarded to a project located in a designated historical area.	
13. *Equity Contribution Schedule:* If equity contributed to the project is paid in installments over time, provide a schedule showing the amount and timing of planned contributions.	
14. *Bridge Loans:* Providing details if the financing plan includes a bridge loan where equity contributions proceeds planned over an extended time can be paid upfront.	
15. Disclosure, perjury and identity of interest statement (Form HUD–2880) completed by the owner.	
16. *PBV award letter:* Identifying the housing authority's approval of project-based voucher assistance for the project by number of units and bedroom distribution.	
17. *PHA rent certification letter:* Documenting proposed contract rents, utility allowances, and gross rental amounts for assisted units. Include rent reasonableness documentation or comparability analysis as evidence of rent determination and certification.	

Appendix B: HCA Notice of Intent To Participate

U.S. Department of Housing and Urban Development, PIH Financial Management Division, Room 4232, 451 Seventh Street SW, Washington, DC 20410.

By: Email: *pih.financial.management.division@hud.gov.*

Re: Intent to Participate on Subsidy Layering Reviews

To Whom It May Concern:

The undersigned is a qualified Housing Credit Agency (HCA) as defined under Section 42 of the Internal Revenue Code of 1986 and hereby notifies the United States Department of Housing and Urban Development (HUD) of our intention to conduct subsidy layering reviews (SLRs) pursuant to HUD's requirements for the purpose of ensuring the combination of assistance under the Section 8 Project-Based Voucher (PBV) Program with other Federal, State, or local assistance does not result in excessive compensation. By signifying this notice, the undersigned hereby certifies that:

Required personnel reviewed the statutes identified in **Federal Register** Notice (Insert new reference) Contracts and Mixed-Finance Development, and 24 CFR 983.55.

The undersigned understands its HCA responsibilities and certifies it will perform SLRs in accordance with all present and future statutory, regulatory and HUD requirements. The undersign acknowledges participation continues unless and until HUD revokes this notice or the undersigned informs HUD, in writing with a 30-day-notice of its decision to withdraw. Upon HUD approval, the undersigned shall immediately assume the responsibility of performing SLRs.

Name of agency and address:

Name, title, and address if authorized official

Phone, FAX, and email:

Date of execution:

Transmit signed and dated notice of Intent to Participate as a PDF attachment to Miguel Fontanez at *pih.financial.management.division@hud.gov* with subject line identified ''Submission of Notice of Intent to Participate.'' For questions concerning the submission and receipt of the email, call the Financial Management Division at (202) 402–4212.

Appendix C: HCA Certification

U.S. Department of Housing and Urban Development, PIH Financial Management Division, Room 4232, 451 Seventh Street SW, Washington, DC 20410.

By: Email: *PBVSLRs@hud.gov.*

Re: Certification of Subsidy Layering Review

To Whom It May Concern:

For purposes of providing of Section 8 Project-Based Voucher (PBV) Assistance authorized pursuant to 42 U.S.C. 8(o)(13), Section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA), Section 102 of the Department of Housing and Urban Development Reform Act of 1989, and in accordance with HUD requirements, all of which address the prevention of excess government subsidy, I hereby certify that the PBV assistance is not more than is necessary to provide affordable housing after taking into account other government assistance for the following project:

Name, address of project:

Name, address of PHA:

Phone, FAX, and email:

Name, address of HCA:

Date of HUD's approval of HCA's intent to participate:

Name of Authorized HCA Certifying Official:

Signature of Authorized HCA Certifying Official:

Date:

Transmit signed and dated SLR certification as PDF attachments to Miguel A. Fontanez at *PBVSLRs@hud.gov,* with a copy to the Director of the local HUD Office of Public Housing: *https://www.hud.gov/program_offices/public_indian_housing/about/field_office,* with subject line identified ''SLR Certification-Project Name, City, State''.

For questions concerning the submission and receipt of the email, contact the Financial Management Division at *PIH.Financial.Management.Division@hud.gov.*

[FR Doc. 2023–05045 Filed 3–10–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2022–N063 FXES11130600000–234–FF06E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of 27 Listed Species in the Mountain-Prairie Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews of 27 species under the Endangered Species Act of 1973, as amended. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last review of the species.

DATES: To ensure consideration in our reviews, we are requesting submission of new information no later than May 12, 2023. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information for each species, see the table in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: To request information, contact the appropriate person in the table in the **SUPPLEMENTARY INFORMATION** section. For general information, contact Karen Newlon, Regional Recovery Project Manager, by phone at 406–430–9010 or by email at *karen_newlon@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access

telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*) for 15 plants and 12 animals in the Mountain-Prairie Region. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review for the species.

Why do we conduct 5-year status reviews?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year status reviews, go to *https://www.fws.gov/project/five-year-status-reviews.*

What information do we consider in our review?

A 5-year status review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status review, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the Act); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year status review and will also be useful in evaluating the ongoing recovery programs for the species.

Which species are under review?

This notice announces our active review of the 27 species listed in the table below.

Common name	Scientific name	Listing status	Historical range	Final listing rule (**Federal Register** citation and publication date)	Contact person, phone, email	Contact person's U.S. mail address
Pawnee montane skipper.	*Hesperia leonardus montana.*	Threatened	Colorado	52 FR 36176; 9/25/1987.	Liisa Niva, Eastern Colorado Supervisor, 303–236–4779; *liisa_niva@fws.gov.*	Ecological Services, Colorado Field Office, 134 Union Blvd., Suite 670, Lakewood, CO 80228.
Preble's meadow jumping mouse.	*Zapus hudsonius preblei.*	Threatened	Colorado, Wyoming	63 FR 26517; 5/13/1998.	Liisa Niva (information above).	Ecological Services, Colorado Field Office (information above).
Dudley Bluffs bladderpod.	*Lesquerella congesta.*	Threatened	Colorado	55 FR 4152; 2/6/1990	Creed Clayton, Acting Western Colorado Supervisor, 970–628–7187; *creed_clayton@fws.gov.*	Ecological Services, Colorado Field Office, 445 W Gunnison Ave., #240, Grand Junction, CO 81501–5711.
Dudley Bluffs twinpod.	*Physaria obcordata.*	Threatened	Colorado	55 FR 4152; 2/6/1990	Creed Clayton (information above)..	Ecological Services, Colorado Field Office (information above).
Parachute beardtongue.	*Penstemon debilis.*	Threatened	Colorado	76 FR 45054; 8/26/2011.	Creed Clayton (information above).	Ecological Services, Colorado Field Office (information above).
Gunnison sage-grouse.	*Centrocercus minimus.*	Threatened	Colorado, Utah	79 FR 69191; 11/20/2014.	Creed Clayton (information above).	Ecological Services, Colorado Field Office (information above).
Penland beardtongue.	*Penstemon penlandii.*	Endangered	Colorado	54 FR 29658; 7/13/1989.	Creed Clayton (information above).	Ecological Services, Colorado Field Office (information above).
Osterhout milkvetch.	*Astragalus osterhoutii.*	Endangered	Colorado	54 FR 29658; 7/13/1989.	Creed Clayton (information above).	Ecological Services, Colorado Field Office (information above).
Colorado pikeminnow.	*Ptychocheilus lucius.*	Endangered	Arizona, California, Colorado, New Mexico, Utah, Wyoming.	32 FR 4001; 3/11/1967.	Julie Stahli, Director, Upper Colorado River Recovery Program, 303–236–4573, *julie_stahli@fws.gov.*	Upper Colorado Endangered Fish River Recovery Program, 44 Union Blvd., #120, Lakewood, CO 80228–1807.
Bonytail	*Gila elegans*	Endangered	Arizona, California, Colorado, Nevada, Utah.	45 FR 27710; 4/23/1980.	Julie Stahli (information above).	Upper Colorado Endangered Fish River Recovery Program (information above).
Neosho madtom	*Noturus placidus*	Threatened	Kansas, Missouri, Oklahoma.	55 FR 21148; 5/22/1990.	Jason Luginbill, Project Leader, 785–539–3474, *jason_luginbill@fws.gov.*	Ecological Services, Kansas Field Office, 2609 Anderson Ave., Manhattan, KS 66502.
Meltwater lednian stonefly.	*Lednia tumana*	Threatened	Montana	84 FR 64210; 11/21/2019.	Adam Zerrenner, Project Leader, 406–430–9003; *adam_zerrenner@fws.gov.*	Ecological Services, Montana Field Office, 585 Shephard Way, Suite 1, Helena, MT 59601.
Western glacier stonefly.	*Zapada glacier*	Threatened	Montana, Wyoming	84 FR 64210; 11/21/2019.	Adam Zerrenner (information above).	Ecological Services, Montana Field Office (information above).

Common name	Scientific name	Listing status	Historical range	Final listing rule (**Federal Register** citation and publication date)	Contact person, phone, email	Contact person's U.S. mail address
Black-footed ferret	*Mustela nigripes*	Endangered	Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Texas, Utah, Wyoming.	32 FR 4001; 03/11/1967.	Pete Gober, Project Leader, 720–626–5260; *pete_gober@fws.gov*.	National Black-footed Ferret Conservation Center, P.O. Box 190, Wellington, CO 80459.
Desert yellowhead	*Yermo xanthocephalus*.	Threatened	Wyoming	67 FR 11442; 3/14/2002.	Tyler Abbott, Project Leader, 307–757–3707; *tyler_abbott@fws.gov*.	Ecological Services, Wyoming Field Office, 334 Parsley Blvd., Cheyenne, WY 82007.
Wyoming toad	*Anaxyrus baxteri*	Endangered	Wyoming	49 FR 1992; 1/17/1984.	Tyler Abbott (information above).	Ecological Services, Wyoming Field Office (information above).
Pariette cactus	*Sclerocactus brevispinus*.	Threatened	Utah	74 FR 47112; 9/15/2009.	George Weekley, Acting Project Leader, 385–285–7929; *george_weekley@fws.gov*.	Ecological Services, Utah Field Office, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119.
Uinta Basin hookless cactus.	*Sclerocactus wetlandicus*.	Threatened	Utah	74 FR 47112; 9/15/2009.	George Weekley (information above).	Ecological Services, Utah Field Office (information above).
San Rafael cactus	*Pediocactus despainii*.	Endangered	Utah	52 FR 34914; 9/16/1987.	George Weekley (information above).	Ecological Services, Utah Field Office (information above).
Winkler cactus	*Pediocactus winkleri*.	Threatened	Utah	63 FR 44587; 8/20/1998.	George Weekley (information above).	Ecological Services, Utah Field Office (information above).
Last Chance townsendia.	*Townsendia aprica*.	Threatened	Utah	50 FR 33734; 8/21/1985.	George Weekley (information above).	Ecological Services, Utah Field Office (information above).
Clay reed-mustard	*Schoenocrambe argillacea*.	Threatened	Utah	57 FR 1398; 1/14/1992.	George Weekley (information above).	Ecological Services, Utah Field Office (information above).
Shrubby reed-mustard.	*Schoenocrambe suffrutescens*.	Endangered	Utah	52 FR 37416; 10/6/1987.	George Weekley (information above).	Ecological Services, Utah Field Office (information above).
Clay phacelia	*Phacelia argillacea*.	Endangered	Utah	43 FR 44810; 9/28/1978.	George Weekley (information above).	Ecological Services, Utah Field Office (information above).
Autumn buttercup	*Ranunculus aestivalis (=acriformis)*.	Endangered	Utah	54 FR 30550; 7/21/1989.	George Weekley (information above).	Ecological Services, Utah Field Office (information above).
Virgin River chub	*Gila seminuda (=robusta)*.	Endangered	Arizona, Nevada, Utah	54 FR 35305; 8/24/1989.	George Weekley (information above).	Ecological Services, Utah Field Office (information above).
Woundfin	*Plagopterus argentissimus*.	Endangered	Arizona, Nevada, Utah	35 FR 16047; 10/13/1970.	George Weekley (information above).	Ecological Services, Utah Field Office (information above).

Request for New Information

To ensure that a 5-year status review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

How do I ask questions or provide information?

If you wish to provide information for any species listed above, please submit your comments and materials to the appropriate contact in the table above. You may also direct questions to those contacts. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

Public Availability of Submissions

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Contents of Submissions

Please make your comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to be relevant to agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations.

Authority

We publish this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Anna Muñoz,

Deputy Regional Director, Lakewood, Colorado.

[FR Doc. 2023–05064 Filed 3–10–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2023–N008; FXES11130200000–223–FF02ENEH00]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Review of the Mexican Wolf in the Southwest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of review; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are conducting a 5-year status review of the Mexican wolf under the Endangered Species Act. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review for the species.

DATES: To ensure consideration, we are requesting submission of new information no later than April 12, 2023. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For details on how to request or submit information, see Request for Information and How Do I Ask Questions or Provide Information? in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For information on a particular species, contact the person in the table in **SUPPLEMENTARY INFORMATION**. For general information, contact Brady McGee, by telephone at 505–761–4748; or by email at *Brady_McGee@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Why do we conduct 5-year reviews?

Under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year status reviews, refer to our factsheet at *https://www.fws.gov/endangered/what-we-do/recovery-overview.html.*

What information do we consider in our review?

A 5-year status review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status review, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the ESA); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year status review and will also be useful in evaluating the ongoing recovery programs for the species.

SPECIES UNDER REVIEW

Common name	Scientific name	Listing status	Current range	Final listing rule (**Federal Register** citation and publication date)	Contact person, phone, email	Contact person's U.S. mail address
Mexican wolf	*Canis lupus baileyi.*	Endangered, Experimental, Non-Essential.	New Mexico and Arizona.	40 FR 17590, 4/21/1975.	Brady McGee, Mexican Wolf Recovery Coordinator, 505–761–4748 (phone) or *Brady_McGee@fws.gov* (email).	U.S. Fish and Wildlife Service, 2105 Osuna Rd. NE, Albuquerque, NM 87113–1001.

Request for Information

To ensure that a 5-year status review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

How do I ask questions or provide information?

If you wish to provide information for the species listed above, please submit your comments and materials to the contact in the table above. You may also direct questions to the person in **FOR FURTHER INFORMATION CONTACT**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Completed and Active Reviews

A list of all completed and currently active 5-year status reviews can be found at *https://ecos.fws.gov/ecp/report/species-five-year-review.*

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Amy L. Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2023–05091 Filed 3–10–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2023–0021; FXIA16710900000–234–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by April 12, 2023.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2023–0021.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2023–0021.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2023–0021; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185 or via email at *DMAFR@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Kimberly Ange-can Heugten, Ph.D., Raleigh, NC; Permit No. PER0070277

The applicant requests authorization to import biological samples derived from wild and captive-born chimpanzees (*Pan troglodytes*) taken from the Tchimpounga Chimpanzee Rehabilitation Centre, Republic of the Congo, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Memphis Zoo, dba Memphis Zoological Society, Memphis, TN; Permit No. PER1642140

The applicant requests a permit to re-export one live captive-bred female giant panda (*Ailuropoda melanoleuca*), the carcass of one male giant panda, and biological samples derived from giant panda to Shanghai Zoo, Shanghai, China, for the purpose of enhancing the propagation or survival of the species. This notification is for a single re-export.

Applicant: Russell B. Kimbrell, Mountain Home, TX; Permit No. PER0033070

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for Arabian oryx (*Oryx leucoryx*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Russell B. Kimbrell, Mountain Home, TX; Permit No. PER0025148

On November 21, 2022, we published a **Federal Register** notice inviting the public to comment on an application for a permit to conduct certain activities with endangered species (87 FR 70860). We are reopening the comment period to allow the public the opportunity to review the documents that was submitted for an application for a permit authorizing the culling of Arabian oryx (*Oryx leucoryx*) from the captive herd maintained at their facility, to enhance the species' propagation and survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Trophy Applicants

The following applicants request permits to import sport-hunted trophies of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

- Brent C. Oxley, Uvalde, TX; Permit No. PER0613031
- Richard Prager, Greenwich, CT; Permit No. 93301C

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2023–05153 Filed 3–10–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–NWRS–2023–N015; FF09R50000–22X–FVRS84510900000; OMB Control Number 1018–0174]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; U.S. Fish and Wildlife Service Preliminary Land Acquisition Process

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection without change.

DATES: Interested persons are invited to submit comments on or before April 12, 2023.

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. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018–0174'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

On July 19, 2022, we published in the **Federal Register** (87 FR 43047) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on September 19, 2022. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *Regulations.gov* (Docket FWS–R3–NWRS–2022–0097) to provide the public with an additional method to submit comments (in addition to the typical *Info_Coll@fws.gov* email and U.S. mail submission methods). We did not receive any comments in response to that notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of

information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Information collected by the U.S. Fish and Wildlife Service (in support of the land acquisition program) is required under applicable statutes, Department of Justice regulations, Departmental and Service policies, and best business practices. In addition, the land acquisition program facilitates Secretarial Orders 3356 and 3366 by tracking land acquisitions that have potential to support public hunting, fishing, and other forms of outdoor recreation, and access related thereto. Authorities for the collection of realty-related information include:

- U.S. Department of Justice; *Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016);*
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*);
- National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd *et seq.*);
- Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718);
- Migratory Bird Conservation Act, as amended (16 U.S.C. 715–715r);
- Land and Water Conservation Fund Act of 1965 (54 U.S.C. 200301 *et seq.*);
- Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*);
- Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901); and
- Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a).

The Service tracks information collected from landowners as part of the preliminary land acquisition process. Information collected by the Service as part of the preliminary land acquisition process may include the following:

- *Initial Requests*—Initial request to consider property, to include such items as:
  - Identifying information for the legal property owner(s), such as:
    - —Name of primary property owner, along with spouse and/or co-owner(s) whose names appear on the current deed to the property under review;
    - —Marital status;
    - —Other names used; and
    - —Contact information, to include telephone numbers, personal email addresses, and mailing/home addresses.
  - Financial information, to include Social Security Numbers (necessary for final payment transaction).
  - Property description, to include such information as:
    - —Property name,
    - —Location,
    - —Legal description, and
    - —Introductory information.
- *Permission to Inspect and Appraise* (FWS Form 3–2471)—Collects information about the property owner and location, and grants permission to enter and inspect the property for real estate acquisition purposes. Inspection may include, but is not limited to:
  - Appraisal valuations;
  - Boundary survey;
  - Hazardous materials examination (contaminant survey); and
  - Physical examination of any structures on the property.

We do not use FWS Form 3–2471 in projects that are under Memoranda of Understanding (MOU), Memoranda of Agreement (MOA), Cooperative Agreements, certain donation partnerships, and other special cases.

- *Waiver of Appraisal Requirement* (FWS Form 3–2461)—Per 49 CFR 24.102(c)(2), a willing-seller landowner may release the Service from the obligation of obtaining an appraisal for (1) land donations and (2) certain land acquisitions where the anticipated value is low and the valuation problem is uncomplicated.

Unless delivered in person, both the Permission to Inspect and Appraise form (FWS Form 3–2471) and the Waiver of Appraisal Requirement form (FWS Form 3–2461) will contain a cover letter referred to as the access permission letter. The access permission letter does not request any information, but is used to explain the form or waiver process.

Information is collected and protected in accordance with the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552). We will maintain the information in a secure system of records (Real Property Records, FWS–11; 71 FR 68635 (November 27, 2006); modification published 73 FR 31877 (June 4, 2008)). We gather Social Security numbers and banking information to assist with electronic payments and preparation of the required Internal Revenue Service 1099 Forms.

Title of Collection: U.S. Fish and Wildlife Service Preliminary Land Acquisition Process.

OMB Control Number: 1018–0174.

Form Numbers: 3–2461 and 3–2471.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Individuals/households, private sector, and State/local/Tribal governments participating in realty transactions with the Service.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response	Estimated annual burden hours *
Initial Requests					
Individuals	151	1	151	.5	76
Private Sector	208	1	208	1	208
Government	16	1	16	2	32

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response	Estimated annual burden hours *
Permission to Inspect and Appraise					
Individuals	53	1	53	.25	13
Private Sector	96	1	96	.25	24
Government	7	1	7	.25	2
Waiver of Appraisal Requirement					
Individuals	9	1	9	.25	2
Private Sector	17	1	17	.25	4
Government	5	1	5	.25	1
Totals:	*562*		*562*		*362*

* Rounded.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–05108 Filed 3–10–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23BD009AV0100; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Preferences for Climate Adaptation Strategies in the Midwest

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS), Department of the Interior, is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before May 12, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to David Fulton, U.S. Geological Survey, Minnesota Cooperative Fish and Wildlife Research Unit, 216 Hodson Hall, 1980 Folwell Avenue, St. Paul, MN 55108, or by email to *dcf@usgs.gov*. Please reference Office of Management and Budget (OMB) Control Number 1028–NEW Adaption Strategies in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact David Fulton by mail at U.S. Geological Survey, Minnesota Cooperative Fish and Wildlife Research Unit, 216 Hodson Hall, 1980 Folwell Avenue, St. Paul, MN 55108, or by email at *dcf@usgs.gov,* or by telephone at 612–625–5256. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: We propose to collect information to better understand public preferences for climate adaptation strategies in the Midwestern United States. We plan to survey up to 1,000 individual residents in each of the following eight states: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The survey will gather information on people's perceptions of climate-change impacts, preferences for climate-adaptation strategies to address specific impacts, and whether the level of the respondent's support for adaptation strategies changes when they are

provided information about the outcomes of strategies. We will also collect sociodemographic and behavioral information, as well as other characteristics, from study participants to understand the factors that correlate with support for climate-adaptation strategies. This information will help us understand what social-psychological factors influence acceptability of climate adaptation strategies as well as how acceptability might be impacted by communication about the benefits of the strategies. Data will be collected using a web-based survey administered at the University of Minnesota. Participants will be randomly assigned to 4 different treatment or control surveys in which the benefits of the different climate-adaptation strategies will be framed differently. We are designing the study to understand how the framing of benefits from the strategies might influence support for the strategies. We will use information from this study to develop recommendations for engaging the public and stakeholders in developing climate-change adaptation management strategies.

Title of Collection: Preferences for Climate Adaptation Strategies in the Midwest.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New information collection.

Respondents/Affected Public: Individuals or households residing in 1 of 8 midwestern states.

Total Estimated Number of Annual Respondents: 8,000.

Total Estimated Number of Annual Responses: 8,000.

Estimated Completion Time per Response: 20 minutes.

Total Estimated Number of Annual Burden Hours: 2,667 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

John D. Thompson,

Deputy Chief, Cooperative Research Units, Ecosystems Mission Area, U.S. Geological Survey.

[FR Doc. 2023–05023 Filed 3–10–23; 8:45 am]

BILLING CODE 4334–63–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–382 and 731–TA–800, 801, and 803 (Fourth Review)]

Stainless Steel Sheet and Strip From Japan, South Korea, and Taiwan; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty and countervailing duty orders on stainless steel sheet and strip from Japan, South Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: March 7, 2023.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins ((202) 205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION

Background.—On December 5, 2022, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (87 FR 78994, December 23, 2022); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in these reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in these reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these reviews will be placed in the nonpublic record on July 28, 2023, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold an in-person hearing in connection with these reviews beginning at 9:30 a.m. on Thursday, August 17, 2023. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Wednesday, August 9, 2023. Any requests to appear

as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the reviews, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on Friday, August 11, 2023. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4 p.m. on August 16, 2023. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is August 8, 2023. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is August 29, 2023. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before August 29, 2023. On September 21, 2023, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before September 25, 2023, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to these reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 7, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–05021 Filed 3–10–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Work Opportunity Tax Credit

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 12, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Work Opportunity Tax Credit (WOTC) is a federal tax credit available to employers that hire individuals from certain targeted groups who have consistently faced significant barriers to employment. WOTC is authorized under section 51 and section 3111(e) of the Internal Revenue Code of 1986, as amended. WOTC is authorized until December 31, 2025, under Sec. 113 of Division EE, Title 3—Consolidated Appropriations Act, 2021 (Pub. L. 116–260). The information collection consists of WOTC processing forms which are used for program administration and reporting program outcomes. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 17, 2022 (87 FR 69048).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB

approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Work Opportunity Tax Credit.

OMB Control Number: 1205–0371.

Affected Public: Individuals or households; State, local, and Tribal governments; private sector—businesses or other for-profits, not-for-profit institutions, and farms.

Total Estimated Number of Respondents: 9,418,828.

Total Estimated Number of Responses: 18,604,708.

Total Estimated Annual Time Burden: 10,205,416 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Dated: March 7, 2023.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2023–05029 Filed 3–10–23; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Eligibility Data Form (VETS–1010)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Veterans' Employment and Training Service (VETS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 12, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 4322 of USERRA requires the Secretary of Labor to investigate claims by individuals who believe their USERRA rights have been violated. Section 3 of the VEOA similarly requires the Secretary of Labor to investigate complaints brought by veterans' preference (VP) eligibles. The instrument contained in this ICR is used by eligible veterans and service-members to file claims under USERRA and VP. The information requested on the form allows the Department to determine initial eligibility of the claimant to seek redress under USERRA or the VP laws. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 1, 2022 (87 FR 73795).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–VETS.

Title of Collection: Eligibility Data Form (VETS–1010).

OMB Control Number: 1293–0002.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 2,250.

Total Estimated Number of Responses: 2,250.

Total Estimated Annual Time Burden: 1,688 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Dated: March 7, 2023.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2023–05030 Filed 3–10–23; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2023–005]

Oregon State Plan for Occupational Safety and Health; Proposed Final Approval, Request for Public Comment, and Notice of Opportunity To Request Informal Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed final approval for separable portion of State Plan; request for written comments; notice of opportunity to request informal public hearing.

SUMMARY: This document gives notice of the eligibility of the Oregon State occupational safety and health plan (State Plan) for determination under Section 18(e) of the Occupational Safety and Health Act of 1970 as to whether final approval of the State Plan over temporary labor camps should be granted. This notice of eligibility for an 18(e) determination applies only to coverage of temporary labor camps and does not affect or disturb the previous grant of final approval in 2005 as to all other issues covered by the Oregon State Plan. If an affirmative determination under section 18(e) is made, the Federal standard and enforcement authority will no longer apply to temporary labor camps.

DATES:

Written comments: Comments and requests for an informal hearing must be received by April 17, 2023.

Informal public hearing: Any interested person may request an informal hearing concerning the final approval of the State Plan over temporary labor camps. OSHA will hold such a hearing if the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) finds that substantial objections have been filed. After the close of the comment period, the Assistant Secretary will review all comments submitted; will review all hearing requests; and will schedule an informal hearing if a hearing is required.

Publication in Oregon: No later than 10 days following the date of publication of this notice in the **Federal Register**, Oregon shall publish, or cause to be published, reasonable notice within the State containing the same information contained herein.

ADDRESSES:

Written comments: You may submit written comments or requests for an informal hearing, identified by Docket No. OSHA–2023–005,[1] electronically at *www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the online instructions for making electronic submissions.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA 2023–005). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates. Submissions must clearly identify the issues addressed and the positions taken.

Docket: To read or download comments or other material in the docket, go to Docket No. OSHA–2023–005 at *www.regulations.gov.* All comments and submissions are listed in the *www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All comments and submissions are available for inspection and, where permissible, copying, by appointment, at the OSHA Docket Office. Contact the OSHA Docket Office, U.S. Department of Labor; telephone: (202) 693–2350 (TTY number: (877) 889–5627).

Electronic copies of this **Federal Register** document are available at *www.regulations.gov.* Other information about the Oregon State Plan is posted on the State's website at *https://osha.oregon.gov.*

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Contact Frank Meilinger, Director, Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email: *Meilinger.Francis2@dol.gov.*

For general and technical information: Contact Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, U.S. Department of Labor; telephone (202) 693–2200; email: *Kalinowski.Doug@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (''OSH Act'' or ''Act''), provides that states which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a state plan (''State Plan'' or ''Plan''). Procedures for State Plan submission and approval are set forth in regulations at 29 CFR part 1902. If the Assistant Secretary of Labor for Occupational Safety and Health (''Assistant Secretary'') finds that the State Plan satisfies, or will satisfy, the criteria set forth in Section 18(e) of the Act and 29 CFR 1902.3 and 1902.4, ''initial approval'' is granted.[2]

A state may commence operations under its Plan after the initial approval determination is made, but the Assistant Secretary retains discretionary concurrent Federal authority over occupational safety and health issues covered by the Plan during the initial approval period as provided by Section 18(e) of the Act. OSHA regulations provide that in states with initially-approved Plans, OSHA and the state enter into an operational status agreement describing the division of responsibilities between them and suspending concurrent Federal authority, as deemed appropriate (29 CFR 1954.3).

If, after a period of no less than three years, the Assistant Secretary determines that the State Plan has satisfied and continues to meet all criteria in Section 18(e) of the OSH Act, the Assistant Secretary may make an affirmative determination under Section 18(e) of the Act (referred to as ''final approval'' of the State Plan), which results in the relinquishment of concurrent Federal authority in the state with respect to occupational safety and health issues covered by the Plan (29 U.S.C. 667(e)). Procedures for Section 18(e) determinations are found in 29 CFR part 1902, subpart D. In general, to be granted final approval, actual operation of the occupational safety and health Plan by the state must be at least as effective as the Federal OSHA program in all areas covered under the State Plan.

II. History of the Present Proceedings

A. Final Approval of the Oregon State Plan Except as to Temporary Labor Camps

The Oregon State Plan, administered by the Oregon Department of Consumer and Business Services, received initial approval on December 28, 1972 (37 FR 28628). On January 23, 1975, OSHA and the State of Oregon entered into an Operational Status Agreement (OSA), which suspended the exercise of concurrent Federal authority in Oregon

[1] Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code.

[2] Section 18(c) provides: The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgement—(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State, (2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce, (3) provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided in section 8, and includes a prohibition on advance notice of inspections, (4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards, (5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards, (6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan, (7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and (8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require (29 U.S.C. 667(c)).

in all except specifically identified areas (40 FR 18427). On December 16, 2004, OSHA published notice (69 FR 75436) that the Oregon State Plan was eligible for a determination as to whether final approval of the Plan should be granted under Section 18(e) of the Act for all issues covered by the Plan, with the exception of temporary labor camps in agriculture, general industry, construction, and logging. The notice stated that the issue of temporary labor camps was being excluded from final approval at that time pending resolution of OSHA's concerns regarding the effectiveness of Oregon's temporary labor camps standards.

After allowing a period for comment, the Assistant Secretary subsequently granted the Oregon State Plan final approval on May 12, 2005, with respect to all issues covered by the Plan except temporary labor camps (70 FR 24947). In granting final approval, the Assistant Secretary made an affirmative determination that the Oregon State Plan had applied and implemented, in actual operations, each of the criteria set forth in Section 18(e) of the Act and 29 CFR 1902.37 as to all portions of the State Plan except temporary labor camps. The Assistant Secretary's findings discussed, among other things, standards, variances, enforcement, the public employee program, staffing and resources, records and reports, voluntary compliance, and injury/illness rates. The Assistant Secretary determined that as to each matter, the State Plan was at least as effective as the Federal program and met the statutory and regulatory requirements for final approval.

As a result of this affirmative determination under Section 18(e) of the Act, OSHA's standards and enforcement authority over all worksites covered by the Oregon State Plan (except temporary labor camps) was relinquished. The OSA, effective January 23, 1975, and as amended, effective December 12, 1983 and November 27, 1991, was superseded by the grant of final approval, except that it continued to apply to temporary labor camps in agriculture, general industry, construction, and logging.

B. Oregon's Temporary Labor Camps Standards

OSHA had originally approved the Oregon State Plan's Temporary Labor Camps standard on October 1, 1976 (41 FR 43485), concluding that the standard was at least as effective as the comparable Federal standard. The standard remained substantively unchanged until 2000, when the Oregon State Plan, on its own initiative through Administrative Order 5–2000, adopted revisions to the State's Agricultural Labor Housing (ALH) and Related Facilities standard (Division 4/J, OAR 437–004–1120) and the Labor Camps standard (Division 2/J, OAR 437–002–0142). Some of the updates to the rules included regrouping subjects into more logical categories, synchronizing with the Oregon Building Codes Division, and changing requirements for garbage and refuse, emergency exits, bedding, and ratios of toilet, handwashing, and bathing facilities.

OSHA responded to the Oregon State Plan on February 28, 2001, identifying instances in which OSHA had concerns that the State's standards were less effective than the comparable Federal rules. Over the next several years, OSHA, the Wage and Hour Division (WHD),[3] and the Oregon State Plan continued to engage on this matter in order to resolve the identified concerns.

While those conversations were ongoing, OSHA and the Oregon State Plan began the separate process of Section 18(e) final approval with the issuance of a **Federal Register** notice on December 16, 2004 (69 FR 75436). However, as noted above, the proposed grant of final approval excluded temporary labor camps due to OSHA's then-unresolved concerns regarding the effectiveness of Oregon's temporary labor camps standards. The 2004 notice of eligibility for final approval provided that OSHA intended to work with Oregon to resolve all effectiveness issues with regard to its two temporary labor camps standards so that final approval could be extended to all covered issues (69 FR 75438).

After further informal discussions with OSHA and WHD, along with feedback from its stakeholders, the Oregon State Plan subsequently filed changes to its ALH and Related Facilities and Temporary Labor Camps standards on March 24, 2008 (Administrative Order 4–2008), to make the rules as effective as Federal OSHA's. Some of the major changes to the ALH and Related Facilities rule (OAR 437–004–1120) included updated requirements for: space and ceiling heights (with effective dates of 2018 in some cases); screens; minimum window area; shower and sink ratios; nearby livestock operations; ground clearance; heating equipment; water pressure; laundry facilities; garbage pickup; and privy distance from housing. References to tents were also removed. For the Temporary Labor Camps rule (OAR 437–002–0142), Oregon removed the entire text of the rule and added new language stating that the ALH and Related Facilities rule at OAR 437–004–1120 applies to general industry, construction, and forest activities as well as agriculture, except for a few limited paragraphs that address certain camp registration and closure requirements. Following further communication with OSHA, Oregon subsequently made additional changes to the ALH and Related Facilities rule on January 26, 2009 (Administrative Order 1–2009), to reflect changes in heater technology, clarify effective dates, and to require enclosed, screened shelters for cooking and eating facilities.

All changes promulgated by Oregon Administrative Orders 4–2008 and 1–2009 were effective as of January 1, 2018. On August 21, 2018, at the quarterly monitoring meeting, the Oregon State Plan Administrator requested that OSHA review and consider removal of the temporary labor camps exception to the State Plan's 18(e) final approval status. WHD approved the changes on December 3, 2020, and the OSHA X regional office approved the rule and recommended removal of the temporary labor camps exception to Oregon's 18(e) final approval status on December 18, 2020.[4]

Subsequently, on May 9, 2022, in response to a March 10, 2020 Executive Order issued by Oregon Governor Kate Brown, the Oregon State Plan adopted new ''Rules to Address Employee and Labor Housing Occupant Exposure to High Ambient Temperatures'' (pursuant to Administrative Order 3–2022), to take effect on June 15, 2022. Specifically, Administrative Order 3–2022 established a new Heat Illness Prevention standard applicable to general industry workers (OAR 437–002–0156), established a new Heat Illness Prevention standard applicable to agricultural workers (OAR 437–004–1131), and amended Oregon's ALH and Related Facilities standard (OAR 437–

[3] In January 1997, the Secretary of the Department of Labor issued Secretary's Orders 5–96 (62 FR 107) and 6–96 (62 FR 111), transferring some of OSHA's authority to enforce the Federal Field Sanitation standard (29 CFR 1928.110) and Temporary Labor Camps standard (29 CFR 1910.142) to what would later become WHD (see 74 FR 58836). Accordingly, WHD had an interest in the Oregon State Plan's temporary labor camps enforcement activity and OSHA consequently sought WHD's input in evaluating the standards.

[4] OSHA's December 18, 2020 approval letter referenced only Oregon's ALH and Related Facilities standard, OAR 437–004–1120. However, OSHA intended to also approve the separate Temporary Labor Camps standard, OAR 437–002–0142, which is identical to the ALH and Related Facilities standard except as to certain limited provisions. Accordingly, the OSHA X regional office sent a subsequent approval letter on May 5, 2022, to clarify that the general industry provisions for temporary labor camps addressed by Administrative Order 4–2008 were also approved.

004–1120) to add new provisions on heat illness prevention in labor housing. OSHA approved this state-initiated change on June 3, 2022, finding the rules to be at least as effective as and more stringent than Federal requirements.

III. Determination of Eligibility

This **Federal Register** document announces the eligibility of the Oregon State Plan for a final approval determination under Section 18(e) as to temporary labor camps in agriculture, general industry, construction, and logging. 29 CFR 1902.39(c) requires that notice of this determination of eligibility be published in order to seek public input prior to the Assistant Secretary's decision.

Pursuant to 29 CFR 1902.37(a), the Assistant Secretary, as part of the final approval process, must determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§ 1902.3 and 1902.4. The Assistant Secretary must make this determination by considering the factors set forth in § 1902.37(b). As documented in the 2004 notice of eligibility for final approval (69 FR at 75438) and the 2005 notice of final approval (70 FR 24947), the Assistant Secretary has already published findings and conclusions as to the vast majority of the specific criteria identified in §§ 1902.3, 1902.4, and 1902.37(b), none of which are presently at issue. Accordingly, the only determination at issue now is whether the Oregon State Plan's temporary labor camps standards are at least as effective as the Federal standards, such that final approval should be extended to that coverage area (see generally §§ 1902.3(c)(1), 1902.4(b), and 1902.37(b)(3) and (b)(4)).

OSHA is satisfied that the Oregon State Plan's amended temporary labor camps standards, as summarized above, indicate that the applicable regulatory indices and criteria are being met. The Assistant Secretary accordingly has made an initial determination that the Oregon State Plan is eligible for an affirmative Section 18(e) determination as to temporary labor camps. The determination of eligibility is based upon OSHA's findings that the criteria of Section 18(c) of the Act are being applied in actual operation in a manner at least as effective as the Federal program.

OSHA's regulations provide that after making an initial determination of eligibility for final approval, a notice must be published in the **Federal Register** and interested parties must be provided an opportunity to submit in writing, data, views, and arguments on the proposed 18(e) determination within 35 days after publication (29 CFR 1902.39(e)). Further, the regulations provide that any interested person or the affected State may request an informal hearing on the proposed affirmative 18(e) determination whenever particularized written objections thereto are filed, and that OSHA must afford an opportunity for an informal hearing if the Assistant Secretary finds that substantial objections have been filed (29 CFR 1902.39(f)–(g)). In order to encourage the submission of informed and specific public comment, OSHA encourages commenters to review the documents contained in Docket No. OSHA–2023–005, which can be accessed electronically at *www.regulations.gov,* and to review Oregon's amended ALH and Related Facilities standard (Division 4/J, OAR 437–004–1120) and Labor Camps standard (Division 2/J, OAR 437–002–0142), available to the public on the State's website at *https://osha.oregon.gov.*

IV. Effect of Section 18(e) Determination

If the Assistant Secretary, after review of any written comments received and the results of any informal hearing if requested and held, determines that the statutory and regulatory criteria applicable to the Oregon State Plan's temporary labor camps standards are being applied in actual operations, final approval will be granted and Federal standards and enforcement authority will cease to be in effect with respect to temporary labor camps, as provided by Section 18(e) of the Act and 29 CFR 1902.42(c). In the event an affirmative Section 18(e) determination is made by the Assistant Secretary following the proceedings described in the present notice, a notice will be published in the **Federal Register** in accordance with 29 CFR 1902.43. The notice will specify the issues as to which Federal standards and enforcement authority are withdrawn. The notice will also state that if continuing evaluations show that the State has failed to maintain a program which is at least as effective as the Federal program, or that the State has failed to submit program change supplements as required by 29 CFR part 1953, the Assistant Secretary may revoke or suspend final approval and reinstate Federal enforcement authority or, if the circumstances warrant, initiate action to withdraw approval of the State Plan.

V. Documents of Record

All information and data presently available to OSHA relating to this Section 18(e) proceeding have been made a part of the record in this proceeding and placed in the OSHA Docket Office. These documents have also been posted electronically at *www.regulations.gov,* which is the Federal e-Rulemaking portal. The contents of the record and all comments and submissions are available for inspection and, where permissible, copying, by appointment, at the OSHA Docket Office; telephone: (202) 693–2350 (TTY number: (877) 889–5627).

The contents of the record are also available for in-person inspection by contacting: Office of the Regional Administrator, U.S. Department of Labor—OSHA: telephone: (206) 757–6700, fax: (206) 757- 6705; and Department of Consumer and Business Services, Oregon Occupational Safety and Health Division: telephone: (503) 378–3272, fax: (503) 947–7461.

To date, the record on this final approval determination includes: Oregon Administrative Order 5–2000; OSHA's letter to Oregon OSHA dated February 28, 2001; Oregon Administrative Order 4–2008 and related documentation; OSHA's letter to Oregon OSHA dated October 3, 2008; Oregon Administrative Order 1–2009 and related documentation; OSHA's memo to Wage and Hour Division recommending approval dated November 26, 2019; Wage and Hour Division's memo to OSHA concurring with approval dated December 3, 2020; OSHA's letter to Oregon OSHA approving AO 4–2008 and AO 1–2009 in agriculture dated December 18, 2020; OSHA's letter to Oregon OSHA clarifying approval of AO 4–2008 in general industry, dated May 5, 2022; Oregon Administrative Order 3–2022 and related documentation; and OSHA's letter to Oregon OSHA approving Administrative Order 3–2022, dated June 3, 2022.

VI. Public Participation

The Assistant Secretary's decision whether to grant an affirmative 18(e) determination to the Oregon State Plan for labor camps coverage will be made after careful consideration of all relevant information presented in the rulemaking. To aid the Assistant Secretary in making this decision, OSHA is soliciting public participation in this process. Interested parties are encouraged to submit all relevant information, views, data, and arguments related to the indices, criteria, and factors presented in 29 U.S.C. 667(c) and 29 CFR part 1902, as they apply to the Oregon State Plan's temporary labor camps coverage.

Notice in the State of Oregon: Oregon is required to publish reasonable notice of the contents of this **Federal Register** notice within the State no later than 10 days following the date of publication of this notice (29 CFR 1902.39(c)).

Written comments: OSHA invites interested persons to submit written data, views, and comments with respect to this proposal to grant an affirmative Section 18(e) determination of the Oregon State Plan's temporary labor camps coverage. When submitting comments, persons must follow the procedures specified above in the sections titled **DATES** and **ADDRESSES**. Submissions must clearly identify the issues addressed and the positions taken. Comments received by the end of the specified comment period will become part of the record and will be available for public inspection and copying at the OSHA Docket Office, as well as online at *www.regulations.gov* (Docket Number OSHA–2023–005). As required by OSHA's regulations, the State of Oregon will be afforded the opportunity to respond to each submission before the Assistant Secretary makes a final decision (29 CFR 1902.39(e)).

Informal public hearing: Pursuant to 29 CFR 1902.39(f), interested persons may request an informal hearing concerning the proposed Section 18(e) determination. Such requests also must be received on or before April 17, 2023. Such requests must present particularized written objections to the proposed Section 18(e) determination. OSHA will hold the informal hearing if the Assistant Secretary finds that substantial objections have been filed (29 CFR 1902.39(g)). As required by regulation, the Assistant Secretary will decide whether an informal hearing is warranted within 30 days of the last day for filing written views or comments and, if so, will publish notice of the time and place of the scheduled hearing at that time. Commenters should note that a request for an informal hearing and a particularized written objection to the proposal is not the same as a substantial objection and OSHA will only hold a hearing if the Assistant Secretary finds that substantial objections have been filed. The Assistant Secretary will consider all written comments submitted when determining whether a substantial objection has been filed.

Certification of the hearing record and Assistant Secretary final decision: Within a reasonable time after the close of the comment period (if no hearing is held) or after the certification of the record (if a hearing is held), after consideration of all relevant information which has been presented, the Assistant Secretary will publish a decision on the proposed affirmative 18(e) determination over temporary labor camps in the **Federal Register** (29 CFR 1902.41(a)).

VII. Federalism

Executive Order 13132, ''Federalism,'' emphasizes consultation between Federal agencies and the States and establishes specific review procedures the Federal government must follow as it carries out policies which affect state or local governments. OSHA has included in the Background section of today's request for public comments an explanation of the relationship between Federal OSHA and the State Plans under the OSH Act. Although the specific consultation procedures provided in section 6 of Executive Order 13132 are not mandatory for final approval decisions under the OSH Act because they neither impose a burden upon the state nor involve preemption of any state law, OSHA has nonetheless consulted extensively with Oregon on the matter of final approval as to temporary labor camps.

VIII. Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this proposed final approval determination, if finalized, will not have a significant economic impact on a substantial number of small entities. Final approval of Oregon's temporary labor camps coverage would not place small employers in Oregon under any new or different requirements, nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved Plan.

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 8–2020 (85 FR 58393 (Sept. 18, 2020)), and 29 CFR parts 1902 and 1956.

Signed in Washington, DC, on February 28, 2023.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–05075 Filed 3–10–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–23–0004; NARA–2023–021]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by April 28, 2023.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-23-0004/document.* This is a direct link to the schedules posted in the docket for this notice on *regulations.gov.* You may submit comments by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

If you are unable to comment via *regulations.gov,* you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Strategy and Performance Division, by email at *regulation_comments@nara.gov* or at 301–837–2902. For information about records schedules, contact Records Management Operations by email at

request.schedule@nara.gov or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Defense, Defense Logistics Agency, Strategic Materials Maintenance and Inventory Records (DAA–0361–2021–0020).
2. Federal Communications Commission, Office of Economics and Analytics, Common Carrier Annual Employment Report (DAA–0173–2021–0026).
3. Federal Communications Commission, Office of Economics and Analytics, Urban Rate Survey (DAA–0173–2021–0032).
4. Federal Communications Commission, Office of the Managing Director, Telecommunications Relay Service (DAA–0173–2021–0025).
5. Federal Communications Commission, Public Safety and Homeland Security Bureau, Emergency Alert System (DAA–0173–2021–0001).
6. Federal Communications Commission, Wireless Telecommunications Bureau, Protection Zones (DAA–0173–2020–0008).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2023–05095 Filed 3–10–23; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: Research for the Museum Grants for American Latino History and Culture Program

AGENCY: Institute of Museum and Library Services.

ACTION: Submission for OMB review, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services announces that the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This Notice proposes the clearance of the *Research for the Museum Grants for American Latino History and Culture Program.*

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 09, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular

information collection request by selecting ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

FOR FURTHER INFORMATION CONTACT: Gibran Villalobos, Project Manager, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Gibran Villalobos may be reached by telephone at 202–653–4649, or by email at *gvillalobos@imls.gov.* Persons who are deaf or hard of hearing (TTY users) may contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

Current Actions: This Notice proposes the clearance of *Research for Grants for American Latino History and Culture Program.* The research is intended to inform IMLS as it designs and implements a new grantmaking program to build the capacity of American Latino museums and education organizations nationwide. The ALHC Program was authorized for creation by the National Museum of the American Latino Act (NMALA) in 2020 (H.R. 2420)—the same Act that authorized creation of a new Smithsonian National Museum of the American Latino. This proposed research will be the first for the ALHC Program to help ensure its relevance to the field and accessibility to stakeholders as well as the measurement of project outcomes. Coupled with a secondary data collection effort (which will include reviewing administrative records, museum/nonprofit grantee databases, and a literature review), this study will include three specific primary data collection activities: community listening sessions, semi-structured interviews, and a survey of ALHC Program stakeholders.

The 60-day Notice was published in the **Federal Register** on November 29, 2022 (87 FR 73336). The agency received no comments under this Notice.

Agency: Institute of Museum and Library Services.

Title: Research for the Museum Grants for American Latino History and Culture Program.

OMB Control Number: 3137–NEW.

Agency Number: 3137.

Affected Public: Museum and cultural professionals at organizations that would be interested in seeking public funding through a new IMLS Museum Grants for American Latino History and Culture Program, and other stakeholders with expertise in the American Latino Museum History and Culture space.

Total Number of Respondents: 400.

Frequency of Response: Once per request.

Average Minutes per Response: 46.

Total Burden Hours: 305.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Cost Burden: $11,327.12.

Total Annual Federal Costs: $45,006.25.

Dated: March 07, 2023.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2023–05028 Filed 3–10–23; 8:45 am]

BILLING CODE 7036–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Audit Committee Meeting

TIME AND DATE: 4:00 p.m., Thursday, March 16, 2023.

PLACE: 1255 Union Street NE, Fifth Floor, Washington, DC 20002.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Audit Committee Meeting.

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive Session

Agenda

I. Call to Order

Open Session—Discussion Items—Part I

II. FY22 External Audit—BDO

Open Session—Action Items—Part I

III. Sunshine Act Approval of Executive (Closed) Session

Executive (Closed) Session

IV. Executive Session with External Auditors—BDO

V. Executive Session with Chief Audit Executive

Open Session—Action Items—Part II

VI. Approval of FY22 External Audit

VII. Professional Services & Vendor Contracts $20k and Under

VIII. Housing Stability Counseling Program (HSCP) Grant Awards

IX. Internal Audit Status Reports

a. Internal Audit Reports Awaiting Management's Response

- AP/ACH FY22

b. Internal Audit Performance Scorecard

c. Implementation of Internal Audit Recommendations

d. Officers' Report as of 2.6.2023

e. Dependent on Other IT Project Management (IAM)

X. Internal Audit Charter

XI. Adjournment

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2023–05185 Filed 3–9–23; 11:15 am]

BILLING CODE 7570–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–117 and CP2023–120]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 14, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–117 and CP2023–120; *Filing Title:* USPS Request to Add Priority Mail & Parcel Select Contract 9 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 6, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* March 14, 2023.

This Notice will be published in the **Federal Register**.

Mallory Richards,

Attorney-Advisor.

[FR Doc. 2023–04995 Filed 3–10–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

International Product Change—International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add an International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: Date of notice: March 13, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 24, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 15 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–114 and CP2023–117.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023–05081 Filed 3–10–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34849; File No. 812–15292]

BC Partners Lending Corporation, et al.

March 7, 2023.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: BC Partners Lending Corporation, Portman Ridge Finance Corporation, Logan Ridge Finance Corporation, BCP Special Opportunities Fund II LP, Alternative Credit Income Fund, Opportunistic Credit Interval Fund, Mount Logan Capital Inc., BC Partners Advisors L.P., Sierra Crest Investment Management LLC, Mount Logan Management, LLC, BCP Special Opportunities Fund II Eur Holdings LP, BCP Special Opportunities Fund II Holdings LP, BCP Special Opportunities Fund II Originations LP, Garrison MML CLO 2019–1 LLC, Great Lakes Senior

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

MLC I LLC, Mount Logan Funding 2018–1 LP, Mount Logan Middle Market Funding LP, Mount Logan Middle Market Funding A LP, Mount Logan Middle Market Funding II LP, Mount Logan Middle Market Funding II A LP, Mount Logan MML CLO 2019–1 LP, Ability Insurance Company, Mount Logan Bluebird Funding LP, Mount Logan Laurel Funding LP, Blue Sky Credit Fund LP, Capitala Business Lending, LLC, Capitalsouth Fund III, L.P., Capitalsouth Partners Fund II Limited Partnership, CPTA Master Blocker, Inc., Great Lakes Portman Ridge Funding I, LLC, PTMN Sub Holdings LLC, BCPL Sub Holdings LLC, Great Lakes BCPL Funding Ltd., Portman Ridge Funding 2018–2 Ltd. and ACIF Master Blocker, LLC.

FILING DATES: The application was filed on December 21, 2021, and amended on June 17, 2022 and January 10, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on April 3, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Rajib Chanda, *Rajib.Chanda@stblaw.com* and Christopher Healey, *Christopher.Healey@stblaw.com.*

FOR FURTHER INFORMATION CONTACT: Aaron Ellias, Acting Branch Chief, or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated January 10, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05043 Filed 3–10–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97054; File No. SR–NYSEAMER–2023–14]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Change To Adopt New Section 811 of NYSE American Company Guide To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

March 7, 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 22, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Section 811 of the NYSE American Company Guide (''Company Guide'') to require issuers to develop and implement a policy providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 26, 2022, the Securities and Exchange Commission (''SEC'') adopted a new rule and rule amendments [4] to implement Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''),[5] which added Section 10D to the Act.[6] In accordance with Section 10D of the Act, the final rules direct the national securities exchanges and associations that list securities to establish listing standards that require each issuer to develop and implement a policy providing for the recovery, in the event of a required accounting restatement, of incentive-based compensation received by current or former executive officers where that compensation is based on the erroneously reported financial information. The listing standards must also require the disclosure of the policy. Additionally, the final rules require a listed issuer to file the policy as an exhibit to its annual report and to include other disclosures in the event a recovery analysis is triggered under the policy.

Specifically, the rule amendments the SEC adopted pursuant to Section 10D of the Act [7] require specific disclosure of the listed issuer's policy on recovery of incentive-based compensation and information about actions taken pursuant to such recovery policy. Rule 10D–1 requires listing exchanges to require that listed issuers file all disclosures with respect to their recovery policies in accordance with the requirements of the federal securities

[4] *See* Release Nos. 33–11126; 34–96159; IC–34732; File No. S7–12–15; 87 FR 73076 (November 28, 2022).

[5] 2 Public Law 111–203, 124 Stat. 1900 (2010).

[6] 15 U.S.C. 78j–4.

[7] *See* footnote 5 *supra.*

laws, including the disclosures required by the applicable SEC filings. The rule amendments require listing exchanges to require each listed issuer to: (i) file their written recovery policies as exhibits to their annual reports; (ii) indicate by check boxes on their annual reports whether the financial statements included in the filings reflect correction of an error to previously issued financial statements and whether any of those error corrections are restatements that required a recovery analysis; and (iii) disclose any actions they have taken pursuant to such recovery policies.

Rule 10D–1 requires that the issuer will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirements under the securities laws. In the adopting release for Rule 10D–1, the SEC states that the issuer and its directors and officers must comply with this requirement in a manner that is consistent with the exercise of their fiduciary duty to safeguard the assets of the issuer (including the time value of any potentially recoverable compensation). The issuer's obligation to recover erroneously awarded incentive based compensation reasonably promptly will be assessed on a holistic basis with respect to each such accounting restatement prepared by the issuer. In evaluating whether an issuer is recovering erroneously awarded incentive-based compensation reasonably promptly, the Exchange will consider whether the issuer is pursuing an appropriate balance of cost and speed in determining the appropriate means to seek recovery, and whether the issuer is securing recovery through means that are appropriate based on the particular facts and circumstances of each executive officer that owes a recoverable amount.

Rule 10D–1 became effective on January 27, 2023. Exchanges are required to file proposed listing standards no later than February 27, 2023, and the listing standards must be effective no later than November 28, 2023. Issuers subject to such listing standards will be required to adopt a recovery policy no later than 60 days following the date on which the applicable listing standards become effective.

Proposed NYSE American Rule

NYSE American proposes to comply with Rule 10D–1 by adopting proposed new Section 811 of the Company Guide. Proposed Section 811 is designed to conform closely to the applicable language of Rule 10D–1. Proposed Section 811 would prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion thereof.

Implementation

Proposed Section 811(b) would establish the timeframe within which listed companies must comply with proposed 811. Specifically:

- Each listed issuer must adopt the recovery policy required by proposed Section 811 (''Recovery Policy'') no later than 60 days from the adoption of the proposed listing standard (''Effective Date'').
- Each listed issuer must comply with its Recovery Policy for all incentive-based compensation Received (as such term is defined in proposed Section 811(e) as set forth below) by executive officers on or after the Effective Date that results from attainment of a financial reporting measure based on or derived from financial information for any fiscal period ending on or after the Effective Date.
- Each listed issuer must provide the required disclosures in the applicable SEC filings required on or after the Effective Date.

Requirements of Proposed Rule

The requirements of proposed Section 811 would be as follows:

- The issuer must adopt and comply with a written Recovery Policy providing that the issuer will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.
- The issuer's Recovery Policy must apply to all incentive-based compensation received by a person:
  - After beginning service as an executive officer;
  - Who served as an executive officer at any time during the performance period for that incentive-based compensation;
  - While the issuer has a class of securities listed on a national securities exchange or a national securities association; and
  - During the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of proposed Section 811. In addition to these last three completed fiscal years, the Recovery Policy must apply to any transition period (that results from a change in the issuer's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the issuer's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year. An issuer's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.
- For purposes of determining the relevant recovery period, the date that an issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of Section 811 is the earlier to occur of:
  - The date the issuer's board of directors, a committee of the board of directors, or the officer or officers of the issuer authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of proposed Section 811; or
  - The date a court, regulator, or other legally authorized body directs the issuer to prepare an accounting restatement as described in paragraph (c)(1) of proposed Section 811.
- The amount of incentive-based compensation that must be subject to the issuer's Recovery Policy (''erroneously awarded compensation'') is the amount of incentive-based compensation received that exceeds the amount of incentive-based compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For incentive-based compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement:
  - The amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the incentive-based compensation was received; and

○ The issuer must maintain documentation of the determination of that reasonable estimate and provide such documentation to the Exchange.

• The issuer must recover erroneously awarded compensation in compliance with its Recovery Policy except to the extent that the conditions in one of the three bullets set forth below are met, and the issuer's committee of independent directors responsible for executive compensation decisions, or in the absence of such a committee,[8] a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable.

○ The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the issuer must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to the Exchange.

○ Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the issuer must obtain an opinion of home country counsel, acceptable to the Exchange, that recovery would result in such a violation, and must provide such opinion to the Exchange.

○ Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

• The issuer is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.

Disclosure in SEC Filings

The issuer must file all disclosures with respect to such Recovery Policy in accordance with the requirements of the Federal securities laws, including the disclosure required by the applicable Commission filings.

General Exemptions

The requirements of proposed Section 811 would not apply to the listing of:

• A security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act[9] or that is exempt from the registration requirements of section 17A(b)(7)(A);[10]

• A standardized option, as defined in 17 CFR 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act;[11]

• Any security issued by a unit investment trust, as defined in 15 U.S.C. 80a–4(2); (4) Any security issued by a management company, as defined in 15 U.S.C. 80a–4(3), that is registered under section 8 of the Investment Company Act of 1940,[12] if such management company has not awarded incentive-based compensation to any executive officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company.

Definitions Under Proposed Section 811

Unless the context otherwise requires, the following definitions apply for purposes of proposed Section 811:

Executive Officer. An executive officer is the issuer's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Executive officers of the issuer's parent(s) or subsidiaries are deemed executive officers of the issuer if they perform such policy making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an executive officer for purposes of Section 811 would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b).

Financial reporting measures. Financial reporting measures are measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission.

Incentive-based compensation. Incentive-based compensation is any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure.

Received. Incentive-based compensation is deemed received in the issuer's fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant of the incentive-based compensation occurs after the end of that period.

Delisting

The Exchange proposes to adopt new Section 1003(h) (''Noncompliance with Section 811 (Erroneously Awarded Compensation)'').

Proposed Section 1003(h)(i) would provide that in any case where the Exchange determines that a listed issuer has not recovered erroneously-awarded compensation as required by its Recovery Policy reasonably promptly after such obligation is incurred, trading in all listed securities of such listed issuer would be immediately suspended and the Exchange would immediately commence delisting procedures with respect to all such listed securities. Rule 10D–1 does not specify the time by which the issuer must complete the recovery of excess incentive-based compensation, NYSE American would however determine whether the steps an issuer is taking constitute compliance with its compensation Recovery Policy. A listed issuer would not be eligible to follow the procedures outlined in Section 1009 with respect to such a delisting determination, and any such listed issuer would be subject to delisting procedures as set forth in Section 1010.

Proposed Section 1003(h)(ii) would deem a listed issuer to be below standards in the event of any failure by such listed issuer to adopt its required Recovery Policy by the Effective Date (a ''Late Recovery Policy Adoption Delinquency''). The listed issuer would be required to notify the Exchange in

[8] Section 805 of the Company Guide provides an exemption from compliance with the Exchange's compensation committee requirements to listed companies that are controlled companies. Foreign based entities can obtain an exemption from the compensation committee requirement pursuant to Section 110 of the Company Guide if such non-compliance is not inconsistent with the issuer's home country law.

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78q–1(b)(7)(A).

[11] 15 U.S.C. 78q–1.

[12] 15 U.S.C. 80a–8.

writing within five days of the Effective Date if it fails to adopt its Recovery Policy by that date.

Upon the occurrence of a Late Recovery Policy Adoption Delinquency, the Exchange will promptly send written notification (the ''Late Recovery Policy Adoption Delinquency Notification'') to a listed issuer of the procedures set forth below. Within five days of the date of the Late Recovery Policy Adoption Delinquency Notification, the listed issuer will be required to (a) contact the Exchange to discuss the status of the delayed Recovery Policy and (b) issue a press release disclosing the occurrence of the Late Recovery Policy Adoption Delinquency, the reason for the Late Recovery Policy Adoption Delinquency and, if known, the anticipated date such Late Recovery Policy Adoption Delinquency will be cured. If the listed issuer has not issued the required press release within five days of the date of the Late Recovery Policy Adoption Delinquency Notification, the Exchange will issue a press release stating that the issuer has incurred a Late Recovery Policy Adoption Delinquency.

During the six-month period from the date of the Late Recovery Policy Adoption Delinquency (the ''Initial Late Recovery Policy Adoption Cure Period''), the Exchange will monitor the listed issuer and the status of the delayed Recovery Policy, including through contact with the company, until the Late Recovery Policy Adoption Delinquency is cured. If the listed issuer fails to cure the Late Recovery Policy Adoption Delinquency within the Initial Late Recovery Policy Adoption Cure Period, the Exchange may, in the Exchange's sole discretion, allow the company's securities to be traded for up to an additional six-month period (the ''Additional Late Recovery Policy Adoption Cure Period'') depending on the company's specific circumstances. If the Exchange determines that an Additional Late Recovery Policy Adoption Cure Period is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Section 1010 of the Company Guide. A listed issuer is not eligible to follow the procedures outlined in Section 1009 with respect to these criteria. Notwithstanding the foregoing, however, the Exchange may in its sole discretion decide (i) not to afford a listed issuer any Initial Late Recovery Policy Adoption Cure Period or Additional Late Recovery Policy Adoption Cure Period, as the case may be, at all or (ii) at any time during the Initial Late Recovery Policy Adoption Cure Period or Additional Late Recovery Policy Adoption Cure Period, to truncate the Initial Cure Period or Additional Cure Period, as the case may be, and immediately commence suspension and delisting procedures if the listed issuer is subject to delisting pursuant to any other provision of the Company Guide, including if the Exchange believes, in the Exchange's sole discretion, that continued listing and trading of a company's securities on the Exchange is inadvisable or unwarranted in accordance with Sections 1001–1006 of the Company Guide. The Exchange may also commence suspension and delisting procedures without affording any cure period at all or at any time during the Initial Late Recovery Policy Adoption Cure Period or Additional Late Recovery Policy Adoption Cure Period if the Exchange believes, in the Exchange's sole discretion, that it is advisable to do so on the basis of an analysis of all relevant factors.

In determining whether an Additional Late Recovery Policy Adoption Cure Period after the expiration of the Initial Late Recovery Policy Adoption Cure Period is appropriate, the Exchange will consider the likelihood that the delayed Recovery Policy can be adopted during the Additional Late Recovery Policy Adoption Cure Period. If the Exchange determines that an Additional Late Recovery Policy Adoption Cure Period is appropriate and the listed issuer fails to adopt a Recovery Policy by the end of such Additional Late Recovery Policy Adoption Cure Period, suspension and delisting procedures will commence immediately in accordance with the procedures set out in Section 1010. In no event will the Exchange continue to trade a company's securities if that listed issuer has failed to cure its Late Recovery Policy Adoption Delinquency on the date that is twelve months after the commencement of the company's Late Recovery Policy Adoption Delinquency.

2. Statutory Basis

The Exchange believes that the proposed rule change 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 promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that proposed new Section 811 is consistent with the protection of investors and the public interest because it furthers the goal of ensuring the accuracy of the financial disclosure of listed issuers. Specifically, the Exchange believes the recovery requirement may provide executive officers with an increased incentive to take steps to reduce the likelihood of inadvertent misreporting and will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which we expect will further discourage such behavior. The Exchange believes that these increased incentives may improve the overall quality and reliability of financial reporting, which further benefits investors. The new proposed Section 811 is also consistent with the requirements of Section 10D of the Act and Rule 10D–1 thereunder, as it would establish a listing standard that is consistent with the requirements of Rule 10D–1.

The Exchange proposes to adopt continued listing standards for proposed Section 811 in proposed Section 1003(h). Pursuant to proposed Section 1003(h)(i), a listed issuer would be subject to immediate suspension and delisting without eligibility for cure periods if the Exchange has determined that the listed issuer has failed to recover reasonably promptly erroneously-awarded compensation as requited by its Recovery Policy. Proposed Section 1003(h)(ii) would provide compliance periods of up to 12 months for a listed issuer that is delayed in adopting its Recovery Policy. The compliance process in proposed Section 1009(h)(ii) is closely modeled on the compliance process for listed issuers delayed in submitting periodic reports to the SEC as set forth in Section 1007 of the Company Guide. The Exchange believes that the compliance procedures set forth in proposed Section 1003(h) are appropriately rigorous and are consistent with the public interest and the interests of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Rule 10D–1 under

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

the Act requires all listing exchanges to adopt rules with respect to the recovery of erroneously awarded compensation that are substantively identically to proposed Section 811.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–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–NYSEAMER–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–NYSEAMER–2023–14, and should be submitted on or before April 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05034 Filed 3–10–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97058; File No. SR–NYSE–2023–13]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Article II, Section 2.03(b) of Its Operating Agreement

March 7, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 23, 2023, New York Stock Exchange LLC (''NYSE'' 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (a) amend Article II, Section 2.03(b) of its operating agreement to provide that the board of directors of its ultimate parent or that board's compensation committee may fix the compensation of the board of directors of the Exchange, and (b) make certain clarifying, technical and conforming changes to the operating agreement. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (a) amend Article II, Section 2.03(b) (Board) of the Thirteenth Amended and Restated Operating Agreement of the Exchange (''Operating Agreement'') to provide that the board of directors of its ultimate parent, Intercontinental Exchange, Inc. (''ICE,'' and its board of directors, the ''ICE Board'') or the compensation committee of the ICE Board (the ''ICE Compensation Committee'') may fix the compensation of the board of directors of the Exchange (the ''Exchange Board''), and (b) make certain clarifying, technical and conforming changes to the Operating Agreement.

Proposed Amendment to Section 2.03(b)

Currently, Exchange directors are not entitled to compensation unless, and to the extent, approved by the sole member of the Exchange, NYSE Group, Inc. (''NYSE Group'').[4] NYSE Group is wholly owned by NYSE Holdings LLC, which is a wholly owned subsidiary of

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* the first paragraph & Section 2.03(b) of the Operating Agreement.

Intercontinental Exchange Holdings, Inc. Intercontinental Exchange Holdings, Inc. is in turn wholly owned by ICE, a public company listed on the NYSE.[5]

The proposed change would move the responsibility to fix Exchange director compensation from NYSE Group to the ICE Board or the ICE Compensation Committee. To do so, the Exchange proposes amending Article II, Section 2.03(b) of the Operating Agreement as follows (proposed deletions bracketed, proposed additions italicized):

Compensation. [Directors of the Company, in their capacity as such, shall not be entitled to compensation, unless, and to the extent, approved by the Member.]*Notwithstanding any provision of this Agreement to the contrary, the Board of Directors of Intercontinental Exchange, Inc. or the compensation committee thereof shall have the authority to fix the compensation of Directors of the Company. The Directors of the Company may be paid their expenses, if any, of attendance at each meeting of the Board and may be paid a fixed sum for attendance at each meeting of the Board or a stated salary as Director (which amounts may be paid in cash or such other form as the Board of Directors of Intercontinental Exchange, Inc. or the compensation committee thereof may from time to time authorize). No such payment shall preclude any Director from serving the Company in any other capacity and receiving compensation therefor.*

As a result of the proposed change, compensation for the Exchange Board members would be fixed by a body that is required to have at least a majority of its members be independent.

Currently, the board of directors of NYSE Group is not required to be independent. This was not always true: when the New York Stock Exchange, Inc. combined with Archipelago Holdings, Inc. under NYSE Group in 2006, NYSE Group was publicly traded, required to have an independent board of directors, and subject to an independence policy.[6] That changed when NYSE Group combined with Euronext N.V. After that combination, NYSE Euronext, the publicly traded parent company, had an independent board of directors subject to an independence policy, and the board of directors of NYSE Group, which became a subsidiary of NYSE Euronext, did not.[7]

When ICE acquired NYSE Euronext, the requirement to have a majority of independent directors moved to ICE.[8] The requirement is in accordance with NYSE listing requirements, which require that listed companies have a majority of independent directors.[9] Accordingly, if the ICE Board fixed the compensation of the Exchange Board, the decision would be made by a body that required to have at least a majority of its members be independent.

If the ICE Compensation Committee fixed the Exchange Board compensation,[10] compensation decisions would be made by a body that is made up of independent members. As a company listed on the NYSE, ICE is required to have a compensation committee that is composed entirely of independent directors that satisfy the additional independence requirements specific to compensation committee members.[11]

The proposed rule text is more comprehensive than the provision it would replace since, unlike the Operating Agreement, it would provide that directors may be paid their expenses for attending board meetings and that they may receive compensation on a per-meeting basis or as a salary, clarify the form of compensation that may be granted, and note that the payment does not preclude a director from serving the Exchange in another capacity.

The Exchange operates as a separate self-regulatory organization and has rules, membership rosters and listings distinct from the rules, membership rosters and, where applicable, listings of its affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively with the Exchange, the ''NYSE Group Exchanges''). At the same time, however, the Exchange believes it is important for each of the NYSE Group Exchanges to have a consistent approach to corporate governance in certain matters, to simplify complexity and create greater consistency among the NYSE Group Exchanges.[12] To that end, each of the NYSE Group Exchanges is proposing a substantially similar change to its governing documents.[13]

The proposed amendment is based on Article III, Section 3.13 (Compensation of Directors) of the ICE Bylaws.[14]

Additional Proposed Amendments

The Exchange proposes to make the following non-substantive technical and conforming changes to the title, recitals

[5] *See* Exchange Act Release No. 72158 (May 13, 2014), 79 FR 28784 (May 19, 2014) (SR–NYSE–2014–23) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Name Changes of Its Ultimate Parent, IntercontinentalExchange Group, Inc., and Its Indirect Parents, IntercontinentalExchange, Inc. and NYSE Euronext Holdings LLC).

[6] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 3, and 5 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 6 and 8 Relating to the NYSE's Business Combination With Archipelago Holdings, Inc.). The NYSE Group was expected to fix the compensation of the Exchange Board through a compensation committee. *Id.* at 11256.

[7] *See* Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) (Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Regarding the Proposed Combination Between NYSE Group, Inc. and Euronext N.V.). *See also* Exhibit 5E to SR–NYSE–2006–120, Section 3.2 (deleting the independence requirements for the NYSE Group board of directors).

[8] *See* Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE– 2013–42; SR–NYSEMKT–2013–50; SR–NYSEArca–2013–62) (Order Granting Approval of Proposed Rule Change Relating to a Corporate Transaction in which NYSE Euronext Will Become a Wholly-Owned Subsidiary of IntercontinentalExchange Group, Inc.). IntercontinentalExchange Group, Inc., subsequently changed its name to IntercontinentalExchange, Inc. *See* 79 FR 28784, *supra* note 5. The ICE Board is subject to the requirements of the Independence Policy of the Board of Directors of Intercontinental Exchange, Inc., available at *https://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/ICE-Independence-Policy.pdf.* The bylaws of ICE require that the members of the ICE Board take into consideration the effect that ICE's actions would have on the ability of the Exchange to carry out its responsibility under Exchange Act. *See* Ninth Amended and Restated Bylaws of Intercontinental Exchange, Inc. (''ICE Bylaws''), Article III, Section 3.14. The ICE Bylaws are available at *https://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/2022/ICE-Ninth-Amended-and-Restated-Bylaws.pdf.*

[9] *See* NYSE Listed Company Manual Sections 303A.01 (Independent Directors) and 303A.02(a)(ii) (Independence Tests), and ICE Bylaws, Article III, Section 3.4.

[10] Pursuant to its Charter, the Compensation Committee of the ICE Board is charged with, among other things, reviewing and approving compensation for the members of the board of directors of any ICE subsidiary, which includes the Exchange. *See* Charter of the Compensation Committee of the Board of Directors of ICE, at *https://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/2022/Intercontinental-Exchange-Inc.-Compensation-Committee-Charter-March-3-2022.pdf. See also* NYSE Listed Company Manual Section 303A.05(b).

[11] *See* NYSE Listed Company Manual Section 303A.05(a) (Compensation Committee). *See also* NYSE Listed Company Manual Section 303A.02(a)(ii) and ICE annual report on Form 10–K for the fiscal year ended December 31, 2021, at 19, available at *https://www.sec.gov/ix?doc=/Archives/edgar/data/1571949/000157194922000006/ice-20211231.htm.*

[12] *See* Exchange Act Release No. 84635 (November 20, 2018), 83 FR 60924 (November 27, 2018) (SR–NYSE–2018–56).

[13] *See* SR–NYSEAmer–2023–15, SR–NYSEArca–2023–18, SR–NYSECHX–2023–10, and SR–NYSENat–2023–08. Presently, three different entities fix the compensation of the boards of directors of the NYSE Group Exchanges: NYSE Group fixes the compensation of the directors of the NYSE, NYSE American LLC, and NYSE National, Inc.; NYSE Chicago Holdings, Inc. fixes the compensation of the directors of NYSE Chicago, Inc.; and the board of directors of NYSE Arca, Inc. fixes its own compensation.

[14] *See* ICE Bylaws, Article III, Section 3.13.

and signature page of the Operating Agreement: [15]

- Update references to the ''Thirteenth Amended and Restated Operating Agreement'' to the ''Fourteenth Amended and Restated Operating Agreement.''
- Update the date in the signature line.
- Update the recitals.
- Correct a typographical error in the recital regarding changes to the Twelfth Amended and Restated Operating Agreement by replacing a reference to Section 2.05 with a reference to Section 2.03(a).[16]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[17] in general, and furthers the objectives of Section 6(b)(1) [18] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[19] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would allow the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members, because the Exchange Board would no longer have its compensation fixed by a body whose members are not subject to independence requirements. The Exchange believes that it is more advisable to have compensation determinations made by a body that is required to have at least a majority of its members be independent, like the ICE Board or ICE Compensation Committee. Otherwise, the compensation could be fixed by a body that is made up of employees or persons related to the Exchange. Indeed, the change would be consistent with prior practice, as immediately after the combination between New York Stock Exchange, Inc. and Archipelago Holdings, Inc., the members of the board of directors of NYSE Group were both subject to independence requirements and expected to fix the compensation of the Exchange Board through a compensation committee.[20] For the same reason, the Exchange believes that the change would contribute to the orderly operation of the Exchange and would promote the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

The Exchange believes that, because at least a majority of the members of the ICE Board and all of the ICE Compensation Committee must be independent, there is no substantial likelihood of a potential conflict of interest. Indeed, the Exchange believes that the proposal lessens the potential for conflicts of interest by eliminating the fixing of compensation by an entity that is not subject to any independence requirements. Further, the governing documents of ICE require that the members of the ICE Board take into consideration the effect that ICE's actions—including actions by the ICE Board or ICE Compensation Committee—would have on the ability of the Exchange ''to carry out [its] responsibilities under the Exchange Act'' and ''to engage in conduct that fosters and does not interfere with the ability of the Exchange[ ] . . . to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and . . . to protect investors and the public interest.'' [21] For the foregoing reasons, the Exchange believes that the proposed change would allow the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members, and would contribute to the orderly operation of the Exchange and would promote the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

Moreover, the Exchange believes that the proposal would promote greater consistency in the compensation philosophy and director compensation structure across affiliated exchanges, thereby promoting the maintenance of a fair and orderly markets, the protection of investors and the public interest. As noted above, the other NYSE Group Exchanges are filing similar proposed changes to their governing documents. By locating the authority to fix compensation in the hands of the ICE Board or the ICE Compensation Committee, the proposed change would permit compensation for each board of directors of an NYSE Group Exchange to be set centrally and with greater uniformity and consistency across affiliated exchanges. The Exchange believes that such conformity would streamline the NYSE Group Exchanges' corporate processes and create more equivalent compensation processes among them, to the benefit of both investors and the public interest. The proposal also reflects the fact that, no matter the size or role of the relevant NYSE Group Exchange, every NYSE Group Exchange board of directors must manage its business while considering the government of the exchange as an ''exchange'' within the meaning of the Exchange Act.[22]

The Exchange believes that the more comprehensive provision would remove impediments to and perfect the mechanism of a free and open market, as it would make the provision relating to director compensation more comprehensive and transparent for market participants, making it so that they can more easily navigate and understand the governing documents. As noted, the proposed text is more

[15] *See* 83 FR 60924, *supra* note 12, at 60926 (proposing to make technical and conforming changes to the title, recitals, and signature page of the Eleventh Amended and Restated Operating Agreement of the Exchange).

[16] There is no Section 2.05 to the Operating Agreement.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(1).

[19] 15 U.S.C. 78f(b)(5).

[20] 71 FR 11251, *supra* note 6, at 11256 (''It is expected that, upon completion of the Merger, the NYSE Group board of directors will have [a] . . . compensation committee'') and 11257 (''[T]he board of directors of New York Stock Exchange LLC is not expected to have its own committees and that any necessary functions with respect to . . . compensation . . . will be performed by the relevant committee[ ] of the NYSE Group board of directors'').

[21] *See* ICE Bylaws, Article III, Section 3.14(a). The NYSE Rules set forth additional review and reporting requirements for listed ICE affiliate securities. *See* Rule 497 (Additional Requirements for Listed Securities Issued by Intercontinental Exchange, Inc. or its Affiliates).

[22] *See* Operating Agreement, Article II, Section 2.03(k); the Twelfth Amended and Restated Operating Agreement of NYSE American, Inc., Article II, Section 2.03(k) (Board); Bylaws of NYSE Arca, Inc., Article III, Section 3.01 (Powers); Second Amended and Restated Bylaws of NYSE Chicago, Inc., Article II, Section 1 (Powers) and Article IX, Sec. 1 (Management of the Corporation); and Seventh Amended and Restated By-laws of NYSE National, Inc., Article III, Section 3.1 (Powers) and Article X, Section 10.1 (Management of the Exchange).

comprehensive than the provision it would replace and would set forth additional detail regarding the compensation that directors may receive, such as whether expenses for attending board meetings may be paid, whether directors may receive compensation on a per-meeting basis or as a salary, and what form of compensation may be granted, and would clarify that payment does not preclude a director from serving the Exchange in another capacity. The Exchange believes that the greater additional detail would add transparency and clarity to the Exchange's governing documents and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency and clarity, thereby reducing potential confusion.

Finally, the proposed non-substantive technical and conforming changes would remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the governing documents. The proposed non-substantive amendments also would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency and clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the corporate governance of the Exchange.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [23] and Rule 19b–4(f)(6) thereunder.[24]

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–NYSE–2023–13 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–NYSE–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–NYSE–2023–13, and should be submitted on or before April 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05038 Filed 3–10–23; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97062; File No. SR–FINRA–2023–002]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036

March 7, 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 February 24, 2023, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to extend, to October 25, 2023, the implementation date of the amendments to FINRA Rule 4210 (Margin Requirements) pursuant to SR–FINRA–2015–036, other than the amendments pursuant to SR–FINRA–2015–036 that were implemented on December 15, 2016. The proposed rule change would not make any changes to the text of FINRA rules.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

On October 6, 2015, FINRA filed with the Commission proposed rule change SR–FINRA–2015–036, which proposed to amend FINRA Rule 4210 to establish margin requirements for (1) To Be Announced (''TBA'') transactions, inclusive of adjustable rate mortgage (''ARM'') transactions; (2) Specified Pool Transactions; and (3) transactions in Collateralized Mortgage Obligations (''CMOs''), issued in conformity with a program of an agency or Government-Sponsored Enterprise (''GSE''), with forward settlement dates, as defined more fully in the filing (collectively, ''Covered Agency Transactions''). The Commission approved SR–FINRA–2015–036 on June 15, 2016 (the ''Approval Date'').[4]

Pursuant to Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA announced in *Regulatory Notice* 16–31 that the rule change would become effective on December 15, 2017, 18 months from the Approval Date, except that the risk limit determination requirements as set forth in paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of Rule 4210 and in new Supplementary Material .05, each as respectively amended or established by SR–FINRA–2015–036 (collectively, the ''risk limit determination requirements''), would become effective on December 15, 2016, six months from the Approval Date.[5]

Industry participants sought clarification regarding the implementation of the requirements pursuant to SR–FINRA–2015–036. Industry participants also requested additional time to make system changes necessary to comply with the requirements, including time to test the system changes, and requested additional time to update or amend margining agreements and related documentation. In response, FINRA made available a set of Frequently Asked Questions & Guidance[6] and, pursuant to SR–FINRA–2017–029,[7] extended the implementation date of the requirements of SR–FINRA–2015–036 to June 25, 2018, except for the risk limit determination requirements, which, as announced in *Regulatory Notice* 16–31, became effective on December 15, 2016.

Industry participants requested that FINRA reconsider the potential impact of certain requirements pursuant to SR–FINRA–2015–036 on smaller and mid-sized firms. Industry participants also requested that FINRA extend the implementation date pending such reconsideration. In response to these concerns, FINRA further extended the implementation date of the requirements of SR–FINRA–2015–036, other than the risk limit determination requirements, most recently to April 24, 2023 (the ''April 24, 2023 implementation date''),[8] and, informed by extensive dialogue, both with industry participants and other regulators, including the staff of the SEC and the Federal Reserve System, FINRA proposed amendments to the requirements of SR–FINRA–2015–036 (the ''Proposed Amendments'').[9]

The SEC, pursuant to delegated authority, approved the Proposed Amendments on January 20, 2022;[10] however, the Commission has stated that, in accordance with Rule 431(e) of the Commission's Rules of Practice, the delegated action approving the Proposed Amendments is stayed until the Commission orders otherwise (the ''stay'').[11] FINRA believes it is appropriate, in the interest of regulatory clarity pending the stay, to adjust the

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR–FINRA–2015–036).

[5] *See* Partial Amendment No. 3 to SR–FINRA–2015–036 and *Regulatory Notice* 16–31 (August 2016), both available at: <*www.finra.org*>.

[6] *See* Responses to Frequently Asked Questions Regarding Covered Agency Transactions Under FINRA Rule 4210, at: <*https://www.finra.org/rules-guidance/guidance/faqs/responses-frequently-asked-questions-regarding-covered-agency-transactions-under-finra-rule*>. Further, staff of the SEC's Division of Trading and Markets made available a set of Frequently Asked Questions regarding Exchange Act Rule 15c3–1 and Rule 15c3–3 in connection with Covered Agency Transactions under FINRA Rule 4210, also available at: <*https://www.finra.org/rules-guidance/guidance/faqs/responses-frequently-asked-questions-regarding-covered-agency-transactions-under-finra-rule*>.

[7] *See* Securities Exchange Act Release No. 81722 (September 26, 2017), 82 FR 45915 (October 2, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2017–029); *see also Regulatory Notice* 17–28 (September 2017).

[8] *See* Securities Exchange Act Release No. 95456 (August 9, 2022), 87 FR 50130 (August 15, 2022) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2022–023).

[9] *See* Securities Exchange Act Release No. 91937 (May 19, 2021), 86 FR 28161 (May 25, 2021) (Notice of Filing of a Proposed Rule Change to Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2021–010). *See also* Partial Amendment No. 1 to SR–FINRA–2021–010, and Letter from Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated September 16, 2021, both available at: <*www.finra.org*>.

[10] *See* Securities Exchange Act Release No. 94013 (January 20, 2022), 87 FR 4076 (January 26, 2022) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036).

[11] *See* Letter from J. Matthew DeLesDernier, Assistant Secretary, SEC, to Adam Arkel, Associate General Counsel, FINRA, dated January 27, 2022, available at: >*sec.gov*<. *See also* Securities Exchange Act Release No. 94724 (April 14, 2022), 87 FR 23287 (April 19, 2022) (Order Granting Petition for Review and Scheduling Filing of Statements; In the Matter of Financial Industry Regulatory Authority, Inc. Regarding an Order Granting the Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036).

implementation of the requirements pursuant to SR–FINRA–2015–036. As such, FINRA is proposing to extend the April 24, 2023 implementation date to October 25, 2023. FINRA notes that the stay on the delegated action approving the Proposed Amendments applies only to the Proposed Amendments and does not affect the amendments approved pursuant to SR–FINRA–2015–036. FINRA further notes that the risk limit determination requirements pursuant to SR–FINRA–2015–036 became effective on December 15, 2016, and, as such, are not affected by the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The operative date will be the date of filing of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change serves the interest of regulatory clarity in the Covered Agency Transaction market pending the stay. FINRA believes that this will thereby protect investors and the public interest by helping to promote stability in the Covered Agency Transaction market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that extending the April 24, 2023 implementation date to October 25, 2023, pending the stay, will help to provide clarity to industry participants and to promote stability in the Covered Agency Transaction market, thereby benefiting all parties.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[12] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. FINRA has stated that the proposed rule change will help to provide clarity to industry participants and to promote stability in the Covered Agency Transaction market pending further Commission action on the Proposed Amendments.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal to extend the implementation date of the amendments to Rule 4210 pursuant to SR–FINRA–2015–036 (other than the amendments pursuant to SR–FINRA–2015–036 that were implemented on December 15, 2016) does not raise any new or novel issues and will reduce any potential uncertainty in the Covered Agency Transaction market. Therefore, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)

[16] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[17] For purposes of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–FINRA–2023–002 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–FINRA–2023–002. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA.

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–FINRA–2023–002 and should be submitted on or before April 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97063; File No. SR–CBOE–2023–005]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Make Permanent the Operation of Its Program That Allows the Exchange To List P.M.-Settled Third Friday-of-the-Month S&P 500 Stock Index (''S&P 500'') Options (''SPX'') Series

March 7, 2023.

On January 6, 2023, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the operation of its pilot program that permits the Exchange to list P.M.-settled third Friday-of-the-month SPX options. The proposed rule change was published for comment in the **Federal Register** on January 24, 2023.[3]

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 10, 2023.

The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates April 24, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CBOE–2023–005).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05042 Filed 3–10–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97052; File No. SR–NYSECHX–2023–09]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing of Proposed Rule Change To Adopt New NYSE Chicago Rule 29 To Establish Listing Standards Related To Recovery of Erroneously Awarded Incentive-Based Executive Compensation

March 7, 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 22, 2023, NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rule 29 to require issuers to develop and implement a policy providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 26, 2022, the Securities and Exchange Commission (''SEC'') adopted a new rule and rule amendments[4] to implement Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''),[5] which added Section 10D to the Act.[6] In accordance with Section 10D of the Act, the final rules direct the national securities exchanges and associations that list securities to establish listing standards that require each issuer to develop and implement a policy providing for the recovery, in the event of a required accounting restatement, of incentive-based compensation received by current or former executive officers where that compensation is based on the erroneously reported financial information. The listing standards must also require the disclosure of the policy. Additionally, the final rules require a listed issuer to file the policy as an exhibit to its annual report and to include other disclosures in the event a recovery analysis is triggered under the policy.

Specifically, the rule amendments the SEC adopted pursuant to Section 10D of the Act[7] require specific disclosure of the listed issuer's policy on recovery of

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96703 (January 18, 2023), 88 FR 4265.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Release Nos. 33–11126; 34–96159; IC–34732; File No. S7–12–15; 87 FR 73076 (November 28, 2022).

[5] 2 Public Law 111–203, 124 Stat. 1900 (2010).

[6] 15 U.S.C. 78j–4.

[7] *See* footnote 5 *supra.*

incentive-based compensation and information about actions taken pursuant to such recovery policy. Rule 10D–1 requires listing exchanges to require that listed issuers file all disclosures with respect to their recovery policies in accordance with the requirements of the Federal securities laws, including the disclosures required by the applicable SEC filings. The rule amendments require listing exchanges to require each listed issuer to: (i) file their written recovery policies as exhibits to their annual reports; (ii) indicate by check boxes on their annual reports whether the financial statements included in the filings reflect correction of an error to previously issued financial statements and whether any of those error corrections are restatements that required a recovery analysis; and (iii) disclose any actions they have taken pursuant to such recovery policies.

Rule 10D–1 requires that the issuer will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirements under the securities laws. In the adopting release for Rule 10D–1, the SEC states that the issuer and its directors and officers must comply with this requirement in a manner that is consistent with the exercise of their fiduciary duty to safeguard the assets of the issuer (including the time value of any potentially recoverable compensation). The issuer's obligation to recover erroneously awarded incentive based compensation reasonably promptly will be assessed on a holistic basis with respect to each such accounting restatement prepared by the issuer. In evaluating whether an issuer is recovering erroneously awarded incentive-based compensation reasonably promptly, the Exchange will consider whether the issuer is pursuing an appropriate balance of cost and speed in determining the appropriate means to seek recovery, and whether the issuer is securing recovery through means that are appropriate based on the particular facts and circumstances of each executive officer that owes a recoverable amount.

Rule 10D–1 became effective on January 27, 2023. Exchanges are required to file proposed listing standards no later than February 27, 2023, and the listing standards must be effective no later than November 28, 2023. Issuers subject to such listing standards will be required to adopt a recovery policy no later than 60 days following the date on which the applicable listing standards become effective.

Proposed NYSE Chicago Rule

NYSE Chicago proposes to comply with Rule 10D–1 by adding new Rule 29 to Chapter 22 of the NYSE Chicago Rules. Proposed Rule 29 is designed to conform closely to the applicable language of Rule 10D–1. Proposed Rule 29 would prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion thereof.

Implementation

Proposed Rule 29(b) would establish the timeframe within which listed companies must comply with proposed Rule 29. Specifically:

- Each listed issuer must adopt the recovery policy required by proposed Rule 29 (''Recovery Policy'') no later than 60 days from the adoption of the proposed listing standard (''Effective Date'').
- Each listed issuer must comply with its Recovery Policy for all incentive-based compensation Received (as such term is defined in proposed Rule 29(e) as set forth below) by executive officers on or after the Effective Date that results from attainment of a financial reporting measure based on or derived from financial information for any fiscal period ending on or after the Effective Date.
- Each listed issuer must provide the required disclosures in the applicable SEC filings required on or after the Effective Date.

Requirements of Proposed Rule

The requirements of proposed Rule 29 would be as follows:

- The issuer must adopt and comply with a written Recovery Policy providing that the issuer will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.
- The issuer's Recovery Policy must apply to all incentive-based compensation received by a person:
  - After beginning service as an executive officer;
  - Who served as an executive officer at any time during the performance period for that incentive-based compensation;
  - While the issuer has a class of securities listed on a national securities exchange or a national securities association; and
  - During the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of proposed Rule 29. In addition to these last three completed fiscal years, the Recovery Policy must apply to any transition period (that results from a change in the issuer's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the issuer's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year. An issuer's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.
- For purposes of determining the relevant recovery period, the date that an issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of Rule 29 is the earlier to occur of:
  - The date the issuer's board of directors, a committee of the board of directors, or the officer or officers of the issuer authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of proposed Rule 29; or
  - The date a court, regulator, or other legally authorized body directs the issuer to prepare an accounting restatement as described in paragraph (c)(1) of proposed Rule 29.
- The amount of incentive-based compensation that must be subject to the issuer's Recovery Policy (''erroneously awarded compensation'') is the amount of incentive-based compensation received that exceeds the amount of incentive-based compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For incentive-based compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly

from the information in an accounting restatement:

○ The amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the incentive-based compensation was received; and

○ The issuer must maintain documentation of the determination of that reasonable estimate and provide such documentation to the Exchange.

• The issuer must recover erroneously awarded compensation in compliance with its Recovery Policy except to the extent that the conditions in one of the three bullets set forth below are met, and the issuer's committee of independent directors responsible for executive compensation decisions, or in the absence of such a committee, a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable.

○ The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the issuer must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to the Exchange.

○ Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the issuer must obtain an opinion of home country counsel, acceptable to the Exchange, that recovery would result in such a violation, and must provide such opinion to the Exchange.

○ Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

• The issuer is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.

Disclosure in SEC Filings

The issuer must file all disclosures with respect to such Recovery Policy in accordance with the requirements of the Federal securities laws, including the disclosure required by the applicable Commission filings.

General Exemptions

The requirements of proposed Rule 29 would not apply to the listing of:

• A security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act [8] or that is exempt from the registration requirements of section 17A(b)(7)(A); [9]

• A standardized option, as defined in 17 CFR 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act; [10]

• Any security issued by a unit investment trust, as defined in 15 U.S.C. 80a–4(2); (4) Any security issued by a management company, as defined in 15 U.S.C. 80a–4(3), that is registered under section 8 of the Investment Company Act of 1940,[11] if such management company has not awarded incentive-based compensation to any executive officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company.

Definitions Under Proposed Rule 29

Unless the context otherwise requires, the following definitions apply for purposes of proposed Rule 29:

Executive Officer. An executive officer is the issuer's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Executive officers of the issuer's parent(s) or subsidiaries are deemed executive officers of the issuer if they perform such policy making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an executive officer for purposes of Rule 29 would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b).

Financial reporting measures. Financial reporting measures are measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission.

Incentive-based compensation. Incentive-based compensation is any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure.

Received. Incentive-based compensation is deemed received in the issuer's fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant of the incentive-based compensation occurs after the end of that period.

Delisting

The Exchange proposes to adopt new Rule 29(f) (''Noncompliance with Rule 29 (Erroneously Awarded Compensation)'').

Proposed Rule 29(f)(i) would provide that in any case where the Exchange determines that a listed issuer has not recovered erroneously-awarded compensation as required by its Recovery Policy reasonably promptly after such obligation is incurred, trading in all listed securities of such listed issuer would be immediately suspended and the Exchange would immediately commence delisting procedures with respect to all such listed securities. Rule 10D–1 does not specify the time by which the issuer must complete the recovery of excess incentive-based compensation, NYSE Chicago would however determine whether the steps an issuer is taking constitute compliance with its compensation Recovery Policy. A listed issuer would not be eligible to follow the procedures outlined in Rules 17A or 22, as applicable, with respect to such a delisting determination, and any such listed issuer would be subject to delisting procedures as set forth in Rule 4.

Proposed Rule 29(f)(ii) would deem a listed issuer to be below standards in the event of any failure by such listed issuer to adopt its required Recovery Policy by the Effective Date (a ''Late Recovery Policy Adoption Delinquency''). The listed issuer would be required to notify the Exchange in

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78q–1(b)(7)(A).

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 80a–8.

writing within five days of the Effective Date if it fails to adopt its Recovery Policy by that date.

Upon the occurrence of a Late Recovery Policy Adoption Delinquency, the Exchange will promptly send written notification (the ''Late Recovery Policy Adoption Delinquency Notification'') to a listed issuer of the procedures set forth below. Within five days of the date of the Late Recovery Policy Adoption Delinquency Notification, the listed issuer will be required to (a) contact the Exchange to discuss the status of the delayed Recovery Policy and (b) issue a press release disclosing the occurrence of the Late Recovery Policy Adoption Delinquency, the reason for the Late Recovery Policy Adoption Delinquency and, if known, the anticipated date such Late Recovery Policy Adoption Delinquency will be cured. If the listed issuer has not issued the required press release within five days of the date of the Late Recovery Policy Adoption Delinquency Notification, the Exchange will issue a press release stating that the issuer has incurred a Late Recovery Policy Adoption Delinquency.

During the six-month period from the date of the Late Recovery Policy Adoption Delinquency (the ''Initial Late Recovery Policy Adoption Cure Period''), the Exchange will monitor the listed issuer and the status of the delayed Recovery Policy, including through contact with the company, until the Late Recovery Policy Adoption Delinquency is cured. If the listed issuer fails to cure the Late Recovery Policy Adoption Delinquency within the Initial Late Recovery Policy Adoption Cure Period, the Exchange may, in the Exchange's sole discretion, allow the company's securities to be traded for up to an additional six-month period (the ''Additional Late Recovery Policy Adoption Cure Period'') depending on the company's specific circumstances. If the Exchange determines that an Additional Late Recovery Policy Adoption Cure Period is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Rule 4. A listed issuer is not eligible to follow the procedures outlined in Rules 17A or 22, as applicable, with respect to these criteria. Notwithstanding the foregoing, however, the Exchange may in its sole discretion decide (i) not to afford a listed issuer any Initial Late Recovery Policy Adoption Cure Period or Additional Late Recovery Policy Adoption Cure Period, as the case may be, at all or (ii) at any time during the Initial Late Recovery Policy Adoption Cure Period or Additional Late Recovery Policy Adoption Cure Period, to truncate the Initial Cure Period or Additional Cure Period, as the case may be, and immediately commence suspension and delisting procedures if the listed issuer is subject to delisting pursuant to any other provision of the Company Guide, including if the Exchange believes, in the Exchange's sole discretion, that continued listing and trading of a company's securities on the Exchange is inadvisable or unwarranted in accordance with Rules 17A or 22. The Exchange may also commence suspension and delisting procedures without affording any cure period at all or at any time during the Initial Late Recovery Policy Adoption Cure Period or Additional Late Recovery Policy Adoption Cure Period if the Exchange believes, in the Exchange's sole discretion, that it is advisable to do so on the basis of an analysis of all relevant factors.

In determining whether an Additional Late Recovery Policy Adoption Cure Period after the expiration of the Initial Late Recovery Policy Adoption Cure Period is appropriate, the Exchange will consider the likelihood that the delayed Recovery Policy can be adopted during the Additional Late Recovery Policy Adoption Cure Period. If the Exchange determines that an Additional Late Recovery Policy Adoption Cure Period is appropriate and the listed issuer fails to adopt a Recovery Policy by the end of such Additional Late Recovery Policy Adoption Cure Period, suspension and delisting procedures will commence immediately in accordance with the procedures set out in Rule 4. In no event will the Exchange continue to trade a company's securities if that listed issuer has failed to cure its Late Recovery Policy Adoption Delinquency on the date that is twelve months after the commencement of the company's Late Recovery Policy Adoption Delinquency.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act [13] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that proposed new Rule 29 is consistent with the protection of investors and the public interest because it furthers the goal of ensuring the accuracy of the financial disclosure of listed issuers. Specifically, the Exchange believes the recovery requirement may provide executive officers with an increased incentive to take steps to reduce the likelihood of inadvertent misreporting and will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which we expect will further discourage such behavior. The Exchange believes that these increased incentives may improve the overall quality and reliability of financial reporting, which further benefits investors. The new proposed Rule 29 is also consistent with the requirements of Section 10D of the Act and Rule 10D–1 thereunder, as it would establish a listing standard that is consistent with the requirements of Rule 10D–1.

The Exchange proposes to adopt continued listing standards for proposed Rule 29 in proposed Rule 29(f). Pursuant to proposed Rule 29(f)(i), a listed issuer would be subject to immediate suspension and delisting without eligibility for cure periods if the Exchange has determined that the listed issuer has failed to recover reasonably promptly erroneously-awarded compensation as requited by its Recovery Policy. Proposed Rule 29(f)(ii) would provide compliance periods of up to 12 months for a listed issuer that is delayed in adopting its Recovery Policy. The Exchange believes that the compliance procedures set forth in proposed Rule 29(f) are appropriately rigorous and are consistent with the public interest and the interests of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Rule 10D–1 under the Act requires all listing exchanges to adopt rules with respect to the recovery of erroneously awarded compensation that are substantively identically to proposed Rule 29.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2023–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2023–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2023–09, and should be submitted on or before April 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05032 Filed 3–10–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97055; File No. SR–NYSE–2023–12]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt New Section 303A.14 of the NYSE Listed Company Manual To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

March 7, 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 22, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Section 303A.14 of the NYSE Listed Company Manual (''Manual'') to require issuers to develop and implement a policy providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 26, 2022, the Securities and Exchange Commission (''SEC'') adopted a new rule and rule amendments[4] to implement Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''),[5] which added Section 10D to the Act.[6] In accordance with Section 10D of the Act, the final rules direct the national securities exchanges and associations that list securities to establish listing standards that require each issuer to develop and implement a policy providing for the recovery, in the event of a required accounting restatement, of incentive-based compensation received by current or former executive officers where that compensation is based on the erroneously reported financial information. The listing standards must also require the disclosure of the policy. Additionally, the final rules require a listed issuer to file the policy as an

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Release Nos. 33–11126; 34–96159; IC–34732; File No. S7–12–15; 87 FR 73076 (November 28, 2022).

[5] 2 Public Law 111–203, 124 Stat. 1900 (2010).

[6] 15 U.S.C. 78j–4.

exhibit to its annual report and to include other disclosures in the event a recovery analysis is triggered under the policy.

Specifically, the rule amendments the SEC adopted pursuant to Section 10D of the Act [7] require specific disclosure of the listed issuer's policy on recovery of incentive-based compensation and information about actions taken pursuant to such recovery policy. Rule 10D–1 requires listing exchanges to require that listed issuers file all disclosures with respect to their recovery policies in accordance with the requirements of the federal securities laws, including the disclosures required by the applicable SEC filings. The rule amendments require listing exchanges to require each listed issuer to: (i) file their written recovery policies as exhibits to their annual reports; (ii) indicate by check boxes on their annual reports whether the financial statements included in the filings reflect correction of an error to previously issued financial statements and whether any of those error corrections are restatements that required a recovery analysis; and (iii) disclose any actions they have taken pursuant to such recovery policies.

Rule 10D–1 requires that the issuer will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirements under the securities laws. In the adopting release for Rule 10D–1, the SEC states that the issuer and its directors and officers must comply with this requirement in a manner that is consistent with the exercise of their fiduciary duty to safeguard the assets of the issuer (including the time value of any potentially recoverable compensation). The issuer's obligation to recover erroneously awarded incentive based compensation reasonably promptly will be assessed on a holistic basis with respect to each such accounting restatement prepared by the issuer. In evaluating whether an issuer is recovering erroneously awarded incentive-based compensation reasonably promptly, the Exchange will consider whether the issuer is pursuing an appropriate balance of cost and speed in determining the appropriate means to seek recovery, and whether the issuer is securing recovery through means that are appropriate based on the particular facts and circumstances of each executive officer that owes a recoverable amount.

[7] *See* footnote 5 *supra.*

Rule 10D–1 became effective on January 27, 2023. Exchanges are required to file proposed listing standards no later than February 27, 2023, and the listing standards must be effective no later than November 28, 2023. Issuers subject to such listing standards will be required to adopt a recovery policy no later than 60 days following the date on which the applicable listing standards become effective.

Proposed NYSE Rule

The NYSE proposes to comply with Rule 10D–1 by adopting proposed new Section 303A.14 of the Manual. Proposed Section 303A.14 is designed to conform closely to the applicable language of Rule 10D–1. Proposed Section 303A.14 would prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion thereof.

Implementation

Proposed Section 303A.14(b) would establish the timeframe within which listed companies must comply with proposed 303A.14. Specifically:

- Each listed issuer must adopt the recovery policy required by proposed Section 303A.14 (''Recovery Policy'') no later than 60 days from the adoption of the proposed listing standard (''Effective Date'').
- Each listed issuer must comply with its Recovery Policy for all incentive-based compensation Received (as such term is defined in proposed Section 303A.14(e) as set forth below) by executive officers on or after the Effective Date that results from attainment of a financial reporting measure based on or derived from financial information for any fiscal period ending on or after the Effective Date.
- Each listed issuer must provide the required disclosures in the applicable SEC filings required on or after the Effective Date.

Requirements of Proposed Rule

The requirements of proposed Section 303A.14 would be as follows:

- The issuer must adopt and comply with a written Recovery Policy providing that the issuer will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.
- The issuer's Recovery Policy must apply to all incentive-based compensation received by a person:
  - After beginning service as an executive officer;
  - Who served as an executive officer at any time during the performance period for that incentive-based compensation;
  - While the issuer has a class of securities listed on a national securities exchange or a national securities association; and
  - During the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of proposed Section 303A.14. In addition to these last three completed fiscal years, the recovery policy must apply to any transition period (that results from a change in the issuer's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the issuer's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year. An issuer's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.
- For purposes of determining the relevant recovery period, the date that an issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of Section 303A.14 is the earlier to occur of:
  - The date the issuer's board of directors, a committee of the board of directors, or the officer or officers of the issuer authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of proposed Section 303A.14; or
  - The date a court, regulator, or other legally authorized body directs the issuer to prepare an accounting restatement as described in paragraph (c)(1) of proposed Section 303A.14.
- The amount of incentive-based compensation that must be subject to the issuer's recovery policy (''erroneously awarded compensation'') is the amount of incentive-based compensation received that exceeds the

amount of incentive-based compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For incentive-based compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement:

○ The amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the incentive-based compensation was received; and

○ The issuer must maintain documentation of the determination of that reasonable estimate and provide such documentation to the Exchange.

• The issuer must recover erroneously awarded compensation in compliance with its Recovery Policy except to the extent that the conditions in one of the three bullets set forth below are met, and the issuer's committee of independent directors responsible for executive compensation decisions, or in the absence of such a committee,[8] a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable.

○ The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the issuer must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to the Exchange.

○ Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the issuer must obtain an opinion of home country counsel, acceptable to the Exchange, that recovery would result in such a violation, and must provide such opinion to the Exchange.

○ Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

• The issuer is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.

Disclosure in SEC Filings

The issuer must file all disclosures with respect to such Recovery Policy in accordance with the requirements of the Federal securities laws, including the disclosure required by the applicable Commission filings.

General Exemptions

The requirements of proposed Section 303A.14 would not apply to the listing of:

• A security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act[9] or that is exempt from the registration requirements of section 17A(b)(7)(A);[10]

• A standardized option, as defined in 17 CFR 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act;[11]

• Any security issued by a unit investment trust, as defined in 15 U.S.C. 80a–4(2); (4) Any security issued by a management company, as defined in 15 U.S.C. 80a–4(3), that is registered under section 8 of the Investment Company Act of 1940,[12] if such management company has not awarded incentive-based compensation to any executive officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company.

Definitions Under Proposed Section 303A.14

Unless the context otherwise requires, the following definitions apply for purposes of proposed Section 303.14:

Executive Officer. An executive officer is the issuer's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Executive officers of the issuer's parent(s) or subsidiaries are deemed executive officers of the issuer if they perform such policy making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an executive officer for purposes of Section 303A.14 would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b).

Financial reporting measures. Financial reporting measures are measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission.

Incentive-based compensation. Incentive-based compensation is any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure.

Received. Incentive-based compensation is deemed received in the issuer's fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant of the incentive-based compensation occurs after the end of that period.

Delisting

The Exchange proposes to adopt new Section 802.01F (''Noncompliance with Section 303A.14 (Erroneously Awarded Compensation)'').

Proposed Section 802.01F(a) would provide that in any case where the Exchange determines that a listed issuer has not recovered erroneously-awarded compensation as required by its Recovery Policy reasonably promptly after such obligation is incurred, trading in all listed securities of such listed issuer would be immediately suspended and the Exchange would immediately commence delisting procedures with respect to all such listed securities. Rule 10D–1 does not specify the time by which the issuer must complete the recovery of excess incentive-based

[8] Section 303A.00 of the Manual provides an exemption from compliance with the Exchange's compensation committee requirements to listed companies that are foreign private issuers or controlled companies.

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78q–1(b)(7)(A).

[11] 15 U.S.C. 78q–1.

[12] 15 U.S.C. 80a–8.

compensation, NYSE would however determine whether the steps an issuer is taking constitute compliance with its compensation Recovery Policy. A listed issuer would not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to such a delisting determination, and any such listed issuer would be subject to delisting procedures as set forth in Section 804.

Proposed Section 802.01F(b) would deem a listed issuer to be below standards in the event of any failure by such listed issuer to adopt its required Recovery Policy by the Effective Date (a ''Late Recovery Policy Adoption Delinquency''). The listed issuer would be required to notify the Exchange in writing within five days of the Effective Date if it fails to adopt its Recovery Policy by that date.

Upon the occurrence of a Late Recovery Policy Adoption Delinquency, the Exchange will promptly send written notification (the ''Late Recovery Policy Adoption Delinquency Notification'') to a listed issuer of the procedures set forth below. Within five days of the date of the Late Recovery Policy Adoption Delinquency Notification, the listed issuer will be required to (a) contact the Exchange to discuss the status of the delayed Recovery Policy and (b) issue a press release disclosing the occurrence of the Late Recovery Policy Adoption Delinquency, the reason for the Late Recovery Policy Adoption Delinquency and, if known, the anticipated date such Late Recovery Policy Adoption Delinquency will be cured. If the listed issuer has not issued the required press release within five days of the date of the Late Recovery Policy Adoption Delinquency Notification, the Exchange will issue a press release stating that the issuer has incurred a Late Recovery Policy Adoption Delinquency.

During the six-month period from the date of the Late Recovery Policy Adoption Delinquency (the ''Initial Late Recovery Policy Adoption Cure Period''), the Exchange will monitor the listed issuer and the status of the delayed Recovery Policy, including through contact with the company, until the Late Recovery Policy Adoption Delinquency is cured. If the listed issuer fails to cure the Late Recovery Policy Adoption Delinquency within the Initial Late Recovery Policy Adoption Cure Period, the Exchange may, in the Exchange's sole discretion, allow the company's securities to be traded for up to an additional six-month period (the ''Additional Late Recovery Policy Adoption Cure Period'') depending on the company's specific circumstances. If the Exchange determines that an Additional Late Recovery Policy Adoption Cure Period is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Section 804.00 of the Listed Company Manual. A listed issuer is not eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to these criteria. Notwithstanding the foregoing, however, the Exchange may in its sole discretion decide (I) not to afford a listed issuer any Initial Late Recovery Policy Adoption Cure Period or Additional Late Recovery Policy Adoption Cure Period, as the case may be, at all or (ii) at any time during the Initial Late Recovery Policy Adoption Cure Period or Additional Late Recovery Policy Adoption Cure Period, to truncate the Initial Cure Period or Additional Cure Period, as the case may be, and immediately commence suspension and delisting procedures if the listed issuer is subject to delisting pursuant to any other provision of the Listed Company Manual, including if the Exchange believes, in the Exchange's sole discretion, that continued listing and trading of a company's securities on the Exchange is inadvisable or unwarranted in accordance with Sections 802.01A, 802.01B, 802.01C or 802.01D of the Listed Company Manual. The Exchange may also commence suspension and delisting procedures without affording any cure period at all or at any time during the Initial Late Recovery Policy Adoption Cure Period or Additional Late Recovery Policy Adoption Cure Period if the Exchange believes, in the Exchange's sole discretion, that it is advisable to do so on the basis of an analysis of all relevant factors.

In determining whether an Additional Late Recovery Policy Adoption Cure Period after the expiration of the Initial Late Recovery Policy Adoption Cure Period is appropriate, the Exchange will consider the likelihood that the delayed Recovery Policy can be adopted during the Additional Late Recovery Policy Adoption Cure Period. If the Exchange determines that an Additional Late Recovery Policy Adoption Cure Period is appropriate and the listed issuer fails to adopt a Recovery Policy by the end of such Additional Late Recovery Policy Adoption Cure Period, suspension and delisting procedures will commence immediately in accordance with the procedures set out in Section 804.00. In no event will the Exchange continue to trade a company's securities if that listed issuer has failed to cure its Late Recovery Policy Adoption Delinquency on the date that is twelve months after the commencement of the company's Late Recovery Policy Adoption Delinquency.

2. Statutory Basis

The Exchange believes that the proposed rule change 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 promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that proposed new Section 303A.14 is consistent with the protection of investors and the public interest because it furthers the goal of ensuring the accuracy of the financial disclosure of listed issuers. Specifically, the Exchange believes the recovery requirement may provide executive officers with an increased incentive to take steps to reduce the likelihood of inadvertent misreporting and will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which we expect will further discourage such behavior. The Exchange believes that these increased incentives may improve the overall quality and reliability of financial reporting, which further benefits investors. The new proposed Section 303A.14 is also consistent with the requirements of Section 10D of the Act and Rule 10D–1 thereunder, as it would establish a listing standard that is consistent with the requirements of Rule 10D–1.

The Exchange proposes to adopt continued listing standards for proposed Section 303A.14 in proposed Section 802.01F. Pursuant to proposed Section 802.01F(a), a listed issuer would be subject to immediate suspension and delisting without eligibility for cure periods if the Exchange has determined that the listed issuer has failed to recover reasonably promptly erroneously-awarded compensation as requited by its Recovery Policy. Proposed Section 802.01F(b) would provide compliance periods of up to 12 months for a listed issuer that is delayed

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

in adopting its Recovery Policy. The compliance process in proposed Section 802.01F(b) is closely modeled on the compliance process for listed issuers delayed in submitting periodic reports to the SEC as set forth in Section 802.01E. The Exchange believes that the compliance procedures set forth in proposed Section 802.01F are appropriately rigorous and are consistent with the public interest and the interests of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Rule 10D–1 under the Act requires all listing exchanges to adopt rules with respect to the recovery of erroneously awarded compensation that are substantively identically to proposed Section 303A.14.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2023–12 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–NYSE–2023–12. 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–NYSE–2023–12, and should be submitted on or before April 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05035 Filed 3–10–23; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97057; File No. SR–NYSEAMER–2023–15]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Article II, Section 2.03(b) of Its Operating Agreement

March 7, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 23, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (a) amend Article II, Section 2.03(b) of its operating agreement to provide that the board of directors of its ultimate parent or that board's compensation committee may fix the compensation of the board of directors of the Exchange, and (b) make certain clarifying, technical and conforming changes to the operating agreement. 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (a) amend Article II, Section 2.03(b) (Board) of the Twelfth Amended and Restated Operating Agreement of the Exchange (''Operating Agreement'') to provide that the board of directors of its ultimate parent, Intercontinental Exchange, Inc. (''ICE,'' and its board of directors, the ''ICE Board'') or the compensation committee of the ICE Board (the ''ICE Compensation Committee'') may fix the compensation of the board of directors of the Exchange (the ''Exchange Board''), and (b) make certain clarifying, technical and conforming changes to the Operating Agreement.

Proposed Amendment to Section 2.03(b)

Currently, Exchange directors are not entitled to compensation unless, and to the extent, approved by the sole member of the Exchange, NYSE Group, Inc. (''NYSE Group'').[4] NYSE Group is wholly owned by NYSE Holdings LLC, which is a wholly owned subsidiary of Intercontinental Exchange Holdings, Inc. Intercontinental Exchange Holdings, Inc. is in turn wholly owned by ICE, a public company listed on the New York Stock Exchange LLC (''NYSE'').[5]

The proposed change would move the responsibility to fix Exchange director compensation from NYSE Group to the ICE Board or the ICE Compensation Committee. To do so, the Exchange proposes amending Article II, Section 2.03(b) of the Operating Agreement as follows (proposed deletions bracketed, proposed additions italicized):

Compensation. [Directors of the Company, in their capacity as such, shall not be entitled to compensation, unless, and to the extent, approved by the Member.]*Notwithstanding any provision of this Agreement to the contrary, the Board of Directors of Intercontinental Exchange, Inc. or the compensation committee thereof shall have the authority to fix the compensation of Directors of the Company. The Directors of the Company may be paid their expenses, if any, of attendance* at each meeting of the Board and may be paid a fixed sum for attendance at each *meeting of the Board or a stated salary as Director (which amounts may be paid in cash or such other form as the Board of Directors of Intercontinental Exchange, Inc. or the compensation committee thereof may from time to time authorize). No such payment shall preclude any Director from serving the Company in any other capacity and receiving compensation therefor.*

As a result of the proposed change, compensation for the Exchange Board members would be fixed by a body that is required to have at least a majority of its members be independent.

Currently, the board of directors of NYSE Group is not required to be independent. This was not always true: when the New York Stock Exchange, Inc. combined with Archipelago Holdings, Inc. under NYSE Group in 2006, NYSE Group was publicly traded, required to have an independent board of directors, and subject to an independence policy.[6] That changed when NYSE Group combined with Euronext N.V. After that combination, NYSE Euronext, the publicly traded parent company, had an independent board of directors subject to an independence policy, and the board of directors of NYSE Group, which became a subsidiary of NYSE Euronext, did not.[7]

When ICE acquired NYSE Euronext, the requirement to have a majority of independent directors moved to ICE.[8] The requirement is in accordance with NYSE listing requirements, which require that listed companies have a majority of independent directors.[9] Accordingly, if the ICE Board fixed the compensation of the Exchange Board, the decision would be made by a body that required to have at least a majority of its members be independent.

If the ICE Compensation Committee fixed the Exchange Board compensation,[10] compensation decisions would be made by a body that is made up of independent members. As a company listed on the NYSE, ICE is required to have a compensation committee that is composed entirely of independent directors that satisfy the additional independence requirements specific to compensation committee members.[11]

The proposed rule text is more comprehensive than the provision it would replace since, unlike the Operating Agreement, it would provide that directors may be paid their expenses for attending board meetings and that they may receive compensation on a per-meeting basis or as a salary, clarify the form of compensation that may be granted, and note that the payment does not preclude a director from serving the Exchange in another capacity.

The Exchange operates as a separate self-regulatory organization and has rules, membership rosters and listings distinct from the rules, membership rosters and, where applicable, listings of its affiliates the NYSE, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively with the

[4] *See* the first paragraph & Section 2.03(b) of the Operating Agreement.

[5] *See* Exchange Act Release No. 72156 (May 13, 2014), 79 FR 28782 (May 19, 2014) (SR–NYSEMKT–2014–41) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Name Changes of Its Ultimate Parent, IntercontinentalExchange Group, Inc., and Its Indirect Parents, IntercontinentalExchange, Inc. and NYSE Euronext Holdings LLC).

[6] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 3, and 5 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 6 and 8 Relating to the NYSE's Business Combination With Archipelago Holdings, Inc.). The NYSE Group was expected to fix the compensation of the Exchange Board through a compensation committee. *Id.* at 11256.

[7] *See* Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) (Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Regarding the Proposed Combination Between NYSE Group, Inc. and Euronext N.V.). *See also* Exhibit 5E to SR–NYSE–2006–120, Section 3.2 (deleting the independence requirements for the NYSE Group board of directors).

[8] *See* Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE– 2013–42; SR–NYSEMKT–2013–50; SR–NYSEArca–2013–62) (Order Granting Approval of Proposed Rule Change Relating to a Corporate Transaction in which NYSE Euronext Will Become a Wholly-Owned Subsidiary of Intercontinental Exchange Group, Inc.). Intercontinental Exchange Group, Inc., subsequently changed its name to Intercontinental Exchange, Inc. *See* 79 FR 28782, *supra* note 5. The ICE Board is subject to the requirements of the Independence Policy of the Board of Directors of Intercontinental Exchange, Inc., available at *https://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/ICE-Independence-Policy.pdf.* The bylaws of ICE require that the members of the ICE Board take into consideration the effect that ICE's actions would have on the ability of the Exchange to carry out its responsibility under Exchange Act. *See* the Ninth Amended and Restated Bylaws of Intercontinental Exchange, Inc. (''ICE Bylaws''), Article III, Section 3.14. The ICE Bylaws are available at *https://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/2022/ICE-Ninth-Amended-and-Restated-Bylaws.pdf.*

[9] *See* NYSE Listed Company Manual Sections 303A.01 (Independent Directors) and 303A.02(a)(ii) (Independence Tests), and ICE Bylaws, Article III, Section 3.4.

[10] Pursuant to its Charter, the Compensation Committee of the ICE Board is charged with, among other things, reviewing and approving compensation for the members of the board of directors of any ICE subsidiary, which includes the Exchange. *See* Charter of the Compensation Committee of the Board of Directors of ICE, at *https://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/2022/Intercontinental-Exchange-Inc.-Compensation-Committee-Charter-March-3-2022.pdf. See also* NYSE Listed Company Manual Section 303A.05(b).

[11] *See* NYSE Listed Company Manual Section 303A.05(a) (Compensation Committee). *See also* NYSE Listed Company Manual Section 303A.02(a)(ii) and ICE annual report on Form 10–K for the fiscal year ended December 31, 2021, at 19, available at *https://www.sec.gov/ix?doc=/Archives/edgar/data/1571949/000157194922000006/ice-20211231.htm.*

Exchange, the ''NYSE Group Exchanges''). At the same time, however, the Exchange believes it is important for each of the NYSE Group Exchanges to have a consistent approach to corporate governance in certain matters, to simplify complexity and create greater consistency among the NYSE Group Exchanges.[12] To that end, each of the NYSE Group Exchanges is proposing a substantially similar change to its governing documents.[13]

The proposed amendment is based on Article III, Section 3.13 (Compensation of Directors) of the ICE Bylaws.[14]

Additional Proposed Amendments

The Exchange proposes to make the following non-substantive technical and conforming changes to the title, recitals and signature page of the Operating Agreement: [15]

- Update references to the ''Twelfth Amended and Restated Operating Agreement'' to the ''Thirteenth Amended and Restated Operating Agreement.''
- Update the dates in the introduction and signature line.
- Update the recitals.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[16] in general, and furthers the objectives of Section 6(b)(1) [17] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[18] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would allow the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members, because the Exchange Board would no longer have its compensation fixed by a body whose members are not subject to independence requirements. The Exchange believes that it is more advisable to have compensation determinations made by a body that is required to have at least a majority of its members be independent, like the ICE Board or ICE Compensation Committee. Otherwise, the compensation could be fixed by a body that is made up of employees or persons related to the Exchange. Indeed, the change would be consistent with prior practice, as immediately after the combination between New York Stock Exchange, Inc. and Archipelago Holdings, Inc., the members of the board of directors of NYSE Group were both subject to independence requirements and expected to fix the compensation of the Exchange Board through a compensation committee.[19] For the same reason, the Exchange believes that the change would contribute to the orderly operation of the Exchange and would promote the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

The Exchange believes that because at least a majority of the members of the ICE Board and all of the ICE Compensation Committee must be independent, there is no substantial likelihood of a potential conflict of interest. Indeed, the Exchange believes that the proposal lessens the potential for conflicts of interest by eliminating the fixing of compensation by an entity that is not subject to any independence requirements. Further, the governing documents of ICE require that the members of the ICE Board take into consideration the effect that ICE's actions—including actions by the ICE Board or ICE Compensation Committee—would have on the ability of the Exchange ''to carry out [its] responsibilities under the Exchange Act'' and ''to engage in conduct that fosters and does not interfere with the ability of the Exchange[ ] . . . to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and . . . to protect investors and the public interest.'' [20] For the foregoing reasons, the Exchange believes that the proposed change would allow the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members, and would contribute to the orderly operation of the Exchange and would promote the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

Moreover, the Exchange believes that the proposal would promote greater consistency in the compensation philosophy and director compensation structure across affiliated exchanges, thereby promoting the maintenance of a fair and orderly markets, the protection of investors and the public interest. As noted above, the other NYSE Group Exchanges are filing similar proposed changes to their governing documents. By locating the authority to fix compensation in the hands of the ICE Board or the ICE Compensation Committee, the proposed change would permit compensation for each board of directors of an NYSE Group Exchange to be set centrally and with greater uniformity and consistency across affiliated exchanges. The Exchange believes that such conformity would streamline the NYSE Group Exchanges' corporate processes and create more equivalent compensation processes among them, to the benefit of both investors and the public interest. The proposal also reflects the fact that, no matter the size or role of the relevant NYSE Group Exchange, every NYSE Group Exchange board of directors must

[12] *See* Exchange Act Release No. 84636 (November 20, 2018), 83 FR 60536 (November 26, 2018) (SR–NYSEAMER–2018–49).

[13] *See* SR–NYSE–2023–13; SR–NYSEArca–2023–18, SR–NYSECHX–2023–10, and SR–NYSENat–2023–08. Presently, three different entities fix the compensation of the boards of directors of the NYSE Group Exchanges: NYSE Group fixes the compensation of the directors of the NYSE American, NYSE, and NYSE National, Inc.; NYSE Chicago Holdings, Inc. fixes the compensation of the directors of NYSE Chicago, Inc.; and the board of directors of NYSE Arca, Inc. fixes its own compensation.

[14] *See* ICE Bylaws, Article III, Section 3.13.

[15] *See* 83 FR 60536, *supra* note 12, at 60538 (proposing to make technical and conforming changes to the title, recitals, and signature page of the Eleventh Amended and Restated Operating Agreement of the Exchange).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(1).

[18] 15 U.S.C. 78f(b)(5).

[19] 71 FR 11251, *supra* note 6, at 11256 (''It is expected that, upon completion of the Merger, the NYSE Group board of directors will have [a] . . . compensation committee'') and 11257 (''[T]he board of directors of New York Stock Exchange LLC is not expected to have its own committees and that any necessary functions with respect to . . . compensation . . . will be performed by the relevant committee[ ] of the NYSE Group board of directors'').

[20] *See* ICE Bylaws, Article III, Section 3.14(a). The NYSE American Rules set forth additional review and reporting requirements for listed ICE affiliate securities. *See* Rule 497-Equities (Additional Requirements for Listed Securities Issued by ICE or its Affiliates).

manage its business while considering the government of the exchange as an ''exchange'' within the meaning of the Exchange Act.[21]

The Exchange believes that the more comprehensive provision would remove impediments to and perfect the mechanism of a free and open market, as it would make the provision relating to director compensation more comprehensive and transparent for market participants, making it so that they can more easily navigate and understand the governing documents. As noted, the proposed text is more comprehensive than the provision it would replace and would set forth additional detail regarding the compensation that directors may receive such as whether expenses for attending board meetings may be paid, whether directors may receive compensation on a per-meeting basis or as a salary, and what form of compensation may be granted, and would clarify that payment does not preclude a director from serving the Exchange in another capacity. The Exchange believes that the greater additional detail would add transparency and clarity to the Exchange's governing documents, and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency and clarity, thereby reducing potential confusion.

Finally, the proposed non-substantive technical and conforming changes would remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the governing documents. The proposed non-substantive amendments also would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency and clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the corporate governance of the Exchange.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b–4(f)(6) thereunder.[23]

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)[24] 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–2023–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2023–15. 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–2023–15, and should be submitted on or before April 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05037 Filed 3–10–23; 8:45 am]

BILLING CODE 8011–01–P

[21] *See* Operating Agreement, Article II, Section 2.03(k); Thirteenth Amended and Restated Operating Agreement of the NYSE, Article II, Section 2.03(k) (Board); Bylaws of NYSE Arca, Inc., Article III, Section 3.01 (Powers); Second Amended and Restated Bylaws of NYSE Chicago, Inc., Article II, Section 1 (Powers) and Article IX, Sec. 1 (Management of the Corporation); and Seventh Amended and Restated By-laws of NYSE National, Inc., Article III, Section 3.1 (Powers) and Article X, Section 10.1 (Management of the Exchange).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34850; File No. 812–15380]

Lord Abbett & Co. LCC, et al.

March 7, 2023.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Lord Abbett & Co. LLC, Lord Abbett Credit Opportunities Fund, Lord Abbett Special Situations Income Fund, Lord Abbett Floating Rate High Income Fund, Lord Abbett Bank Loan Trust, Lord Abbett International Small Cap Trust, Lord Abbett Short Duration Credit Trust, Lord Abbett Small Cap Growth Trust.

FILING DATES: The application was filed on August 23, 2022 and amended on December 29, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on April 3, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov* Applicants: Lawrence B. Stoller, Lord, Abbett & Co. LLC *lstoller@LordAbbett.com;* Michael G. Doherty, Ropes & Gray LLP *michael.doherty@ropesgray.com;* Bryan Chegwidden, Ropes & Gray LLP *bryan.chegwidden@ropesgray.com.*

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated December 29, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05044 Filed 3–10–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97056; File No. SR–NYSECHX–2023–10]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section FIFTH of Its Certificate of Incorporation

March 7, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 23, 2023, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (a) amend Section FIFTH of its certificate of incorporation to provide that the board of directors of its ultimate parent or that board's compensation committee may fix the compensation of the board of directors of the Exchange, and (b) make certain clarifying, technical and conforming changes to the certificate of incorporation. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (a) amend Section FIFTH of the Second Amended and Restated Certificate of Incorporation of the Exchange (''Certificate'') to provide that the board of directors of its ultimate parent, Intercontinental Exchange, Inc. (''ICE,'' and its board of directors, the ''ICE Board''), or the compensation committee of the ICE Board (the ''ICE Compensation Committee'') may fix the compensation of the Board of Directors of the Exchange (the ''Exchange Board''), and (b) make certain clarifying, technical and conforming changes to the Certificate.

The changes described herein would become operative upon the Certificate becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

Proposed Amendment to Section FIFTH

Currently, the sole stockholder of the Exchange, NYSE Chicago Holdings, Inc.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

(''NYSE Chicago Holdings''), has the authority to fix the compensation of all directors for services to the Exchange.[4] The Exchange is wholly owned by NYSE Chicago Holdings, which is wholly owned by NYSE Group, Inc. (''NYSE Group''). NYSE Group is wholly owned by NYSE Holdings LLC, which is a wholly owned subsidiary of Intercontinental Exchange Holdings, Inc. Intercontinental Exchange Holdings, Inc. is in turn wholly owned by ICE, a public company listed on the New York Stock Exchange LLC (''NYSE'').[5]

The proposed change would move the responsibility to fix Exchange director compensation from NYSE Chicago Holdings to the ICE Board or the ICE Compensation Committee. To do so, the Exchange proposes amending Section FIFTH of the Certificate as follows:

• The Exchange proposes to add the following sentence to the end of Section FIFTH(a):

Notwithstanding anything herein to the contrary, as set forth below, the Board of Directors of Intercontinental Exchange, Inc. (''ICE'') or the compensation committee thereof shall have the authority to fix the compensation of directors of the Corporation.

• The Exchange proposes to amend Section FIFTH(c) to read as follows (proposed additions italicized, proposed deletions in brackets):

(c) *Compensation. The Board of Directors of ICE or the compensation committee thereof shall have the authority to fix the compensation of directors of the Corporation. The directors of the Corporation may be paid their expenses, if any, of attendance at each meeting of the Board of Directors of the Corporation and may be paid a fixed sum for attendance at each meeting of the Board of Directors of the Corporation or a stated salary as director (which amounts may be paid in cash or such other form as the Board of Directors of ICE or the compensation committee thereof may from time to time authorize). No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.* [The stockholder shall have authority to fix compensation of all directors for services to the Corporation as directors, officers or otherwise.]

As a result of the proposed change, compensation for Exchange Board members would be fixed by a body that is required to have at least a majority of its members be independent. Currently, the board of directors of NYSE Chicago Holdings is not required to be independent.[6]

If the ICE Board fixed the compensation of the Exchange Board, the decision would be made by a body that was required to have at least a majority of its members be independent.[7] The requirement is in accordance with NYSE listing requirements, which require that listed companies have a majority of independent directors.[8]

If the ICE Compensation Committee fixed the Exchange Board compensation,[9] compensation decisions would be made by a body that is made up of independent members. As a company listed on the NYSE, ICE is required to have a compensation committee that is composed entirely of independent directors that satisfy the additional independence requirements specific to compensation committee members.[10]

The proposed rule text is more comprehensive than the provision it would replace, since it would provide that directors may be paid their expenses for attending board meetings and that they may receive compensation on a per-meeting basis or as a salary, clarify the form of compensation that may be granted, and note that the payment does not preclude a director from serving the Exchange in another capacity.[11]

The Exchange operates as a separate self-regulatory organization and has rules, membership rosters and listings distinct from the rules, membership rosters and, where applicable, listings of its affiliates the NYSE, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (collectively with the Exchange, the ''NYSE Group Exchanges''). At the same time, however, the Exchange believes it is important for each of the NYSE Group Exchanges to have a consistent approach to corporate governance in certain matters, to simplify complexity and create greater consistency among the NYSE Group Exchanges.[12] To that end, each of the NYSE Group Exchanges

[4] *See* Section FIFTH(c) of the Certificate.

[5] *See* Exchange Act Release No. 83635 (July 13, 2018), 83 FR 34182 (July 19, 2018) (SR–CHX–2018–004) (Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments Nos. 1, 2, and 3 Thereto, in Connection With a Proposed Transaction Involving CHX Holdings, Inc. and the Intercontinental Exchange, Inc.).

[6] *See id.* CHX Holdings, Inc. changed its name to NYSE Chicago Holdings, Inc. *See* Exchange Act Release No. 84494 (October 26, 2018), 83 FR 54953 (November 1, 2018) (SR–CHX–2018–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect Name Changes of the Exchange and its Direct Parent Company and To Amend Certain Corporate Governance Provisions).

[7] *See* Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE– 2013–42; SR–NYSEMKT–2013–50; SR–NYSEArca–2013–62) (Order Granting Approval of Proposed Rule Change Relating to a Corporate Transaction in which NYSE Euronext Will Become a Wholly-Owned Subsidiary of IntercontinentalExchange Group, Inc.). IntercontinentalExchange Group, Inc., subsequently changed its name to IntercontinentalExchange, Inc. *See* Exchange Act Release No. 72158 (May 13, 2014), 79 FR 28784 (May 19, 2014) (SR–NYSE–2014–23) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Name Changes of Its Ultimate Parent, IntercontinentalExchange Group, Inc., and Its Indirect Parents, IntercontinentalExchange, Inc. and NYSE Euronext Holdings LLC). The ICE Board is subject to the requirements of the Independence Policy of the Board of Directors of Intercontinental Exchange, Inc., available at *https://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/ICE-Independence-Policy.pdf.* The bylaws of ICE require that the members of the ICE Board take into consideration the effect that ICE's actions would have on the ability of the Exchange to carry out its responsibility under Exchange Act. *See* the Ninth Amended and Restated Bylaws of Intercontinental Exchange, Inc. (''ICE Bylaws''), Article III, Section 3.14. The ICE Bylaws are available at *https://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/2022/ICE-Ninth-Amended-and-Restated-Bylaws.pdf.*

[8] *See* NYSE Listed Company Manual Sections 303A.01 (Independent Directors) and 303A.02(a)(ii) (Independence Tests), and ICE Bylaws, Article III, Section 3.4.

[9] Pursuant to its Charter, the Compensation Committee of the ICE Board is charged with, among other things, reviewing and approving compensation for the members of the board of directors of any ICE subsidiary, which includes the Exchange. *See* Charter of the Compensation Committee of the Board of Directors of ICE, at *https://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/2022/Intercontinental-Exchange-Inc.-Compensation-Committee-Charter-March-3-2022.pdf. See also* NYSE Listed Company Manual Section 303A.05(b).

[10] *See* NYSE Listed Company Manual Section 303A.05(a) (Compensation Committee). *See also* NYSE Listed Company Manual Section 303A.02(a)(ii) and ICE annual report on Form 10–K for the fiscal year ended December 31, 2021, at 19, available at *https://www.sec.gov/ix?doc=/Archives/edgar/data/1571949/000157194922000006/ice-20211231.htm.*

[11] The provision would be consistent with Article II, Section 14 of the Second Amended and Restated Bylaws of NYSE Chicago, Inc., which states that ''[t]he directors may be paid their reasonable expenses, if any, of attendance at each meeting of the Board of Directors and at each meeting of a committee of the Board of Directors of which they are members.'' Under the Delaware General Corporation Law (''DGCL''), the terms of the certificate of incorporation of a corporation supersede any inconsistent bylaw provisions. *See* DGCL Section 109(b); *see also Sinchareonkul* v. *Fahnemann,* 2015 WL 292314, at *6 (Del.Ch., 2015) (stating that (''[w]hen evaluating corporate action for legal compliance, a court examines whether the action contravenes the entity-specific corporate contract. The components of that contract form a hierarchy, comprising from top to bottom (i) the Delaware General Corporation Law (the 'DGCL'), (ii) the certificate of incorporation, and (iii) the bylaws. Each of the lower components of the contractual hierarchy must conform to the higher components.'').

[12] *See* 83 FR 34182, note 5, *supra.*

is proposing a substantially similar change to its governing documents.[13]

The proposed amendment is based on Article III, Section 3.13 (Compensation of Directors) of the ICE Bylaws.[14]

Additional Proposed Amendments

The Exchange proposes to make the following non-substantive technical and conforming changes to the Certificate: [15]

- Throughout the Certificate, change ''Second Amended and Restated Certificate of Incorporation'' to ''Third Amended and Restated Certificate of Incorporation.''
- Throughout the Certificate, update ''Chicago Stock Exchange, Inc.'' to ''NYSE Chicago, Inc.'' [16]
- Move the definition of ''Corporation'' from the second paragraph to the first paragraph.
- In the third paragraph, add ''Second'' in front of ''Amended and Restated Certificate of Incorporation.''
- In Sections EIGHTH and ELEVENTH, replace ''certificate of incorporation'' with ''Third Amended and Restated Certificate of Incorporation'' and in Section ELEVENTH, add ''Third Amended and Restated'' before ''Certificate of Incorporation.''
- Update the date in the signature line.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[17] in general, and furthers the objectives of Section 6(b)(1) [18] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[19] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would allow the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members, because the Exchange Board would no longer have its compensation fixed by a body whose members are not subject to independence requirements. The Exchange believes that it is more advisable to have compensation determinations made by a body that is required to have at least a majority of its members be independent, like the ICE Board or ICE Compensation Committee. Otherwise, the compensation could be fixed by a body that is made up of employees or persons related to the Exchange. For the same reason, the Exchange believes that the change would contribute to the orderly operation of the Exchange and would promote the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

Indeed, the change would be consistent with prior practice, as when the New York Stock Exchange, Inc. combined with Archipelago Holdings, Inc. under NYSE Group in 2006, NYSE Group was publicly traded, required to have an independent board of directors, and subject to an independence policy.[20] That changed when NYSE Group combined with Euronext N.V. After that combination, NYSE Euronext, the publicly traded parent company, had an independent board of directors subject to an independence policy, and the board of directors of NYSE Group, which became a subsidiary of NYSE Euronext, did not.[21] When ICE acquired NYSE Euronext, the requirement to have a majority of independent directors moved to ICE.[22]

The Exchange believes that, because at least a majority of the members of the ICE Board and all of the ICE Compensation Committee must be independent, there is no substantial likelihood of a potential conflict of interest. Indeed, the Exchange believes that the proposal lessens the potential for conflicts of interest by eliminating the fixing of compensation by an entity that is not subject to any independence requirements. Further, the governing documents of ICE require that the members of the ICE Board take into consideration the effect that ICE's actions—including actions by the ICE Board or ICE Compensation Committee—would have on the ability of the Exchange ''to carry out [its] responsibilities under the Exchange Act'' and ''to engage in conduct that fosters and does not interfere with the ability of the Exchange[ ] . . . to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and . . . to protect investors and the public interest.'' [23] For the foregoing reasons, the Exchange believes that the proposed change would allow the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members, and

[13] *See* SR–NYSE–2023–13; SR–NYSEAmer–2023–15, SR–NYSEArca–2023–18, and SR–NYSENat–2023–08. Presently, three different entities fix the compensation of the boards of directors of the NYSE Group Exchanges: NYSE Group fixes the compensation of the directors of the NYSE, NYSE American LLC, and NYSE National, Inc.; NYSE Chicago Holdings, Inc. fixes the compensation of the directors of NYSE Chicago; and the board of directors of NYSE Arca, Inc. fixes its own compensation.

[14] *See* ICE Bylaws, Article III, Section 3.13.

[15] *See* 83 FR 34182, note 5, *supra* (proposing to make technical and conforming changes throughout the to the title, recitals, and signature page of the CHX Certificate of Incorporation and CHX bylaws).

[16] Chicago Stock Exchange, Inc. changed its name to NYSE Chicago, Inc. *See* 83 FR 54953, note 6, *supra.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(1).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 3, and 5 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 6 and 8 Relating to the NYSE's Business Combination With Archipelago Holdings, Inc.). The NYSE Group was expected to fix the compensation of the Exchange Board through a compensation committee. *Id.* at 11256 (''It is expected that, upon completion of the Merger, the NYSE Group board of directors will have [a] . . . compensation committee'') and 11257 (''[T]he board of directors of New York Stock Exchange LLC is not expected to have its own committees and that any necessary functions with respect to . . . compensation . . . will be performed by the relevant committee[ ] of the NYSE Group board of directors''). Having ICE, a public company, or the ICE Compensation Committee, which is required to be made up of independent directors, fix Exchange Board compensation would be consistent with this practice.

[21] Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) (Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Regarding the Proposed Combination Between NYSE Group, Inc. and Euronext N.V.). *See also* Exhibit 5E to SR–NYSE–2006–120, Section 3.2 (deleting the independence requirements for the NYSE Group board of directors).

[22] *See supra* note 7.

[23] *See* ICE Bylaws, Article III, Section 3.14 (a). The Exchange has adopted a rule prohibiting the listing of affiliate securities and setting forth additional reporting requirements. *See* Rule 28 (Additional Requirements for Listed Securities Issued by Intercontinental Exchange, Inc. or its Affiliates).

would contribute to the orderly operation of the Exchange and would promote the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

Moreover, the Exchange believes that the proposal would promote greater consistency in the compensation philosophy and director compensation structure across affiliated exchanges, thereby promoting the maintenance of a fair and orderly markets, the protection of investors and the public interest. As noted above, the other NYSE Group Exchanges are filing similar proposed changes to their governing documents. By locating the authority to fix compensation in the hands of the ICE Board or the ICE Compensation Committee, the proposed change would permit compensation for each board of directors of an NYSE Group Exchange to be set centrally and with greater uniformity and consistency across affiliated exchanges. The Exchange believes that such conformity would streamline the NYSE Group Exchanges' corporate processes and create more equivalent compensation processes among them, to the benefit of both investors and the public interest. The proposal also reflects the fact that, no matter the size or role of the relevant NYSE Group Exchange, every NYSE Group Exchange board of directors must manage its business while considering the government of the exchange as an ''exchange'' within the meaning of the Exchange Act.[24]

The Exchange believes that the more comprehensive provision would remove impediments to and perfect the mechanism of a free and open market, as it would make the provision relating to director compensation more comprehensive and transparent for market participants, making it so that they can more easily navigate and understand the governing documents. As noted, the proposed text is more comprehensive than the provision it would replace and would set forth additional detail regarding the compensation that directors may receive, such as whether expenses for attending board meetings may be paid, whether directors may receive compensation on a per-meeting basis or as a salary, and what form of compensation may be granted, and would clarify that payment does not preclude a director from serving the Exchange in another capacity. The Exchange believes that the greater additional detail would add transparency and clarity to the Exchange's governing documents and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency and clarity, thereby reducing potential confusion.

Finally, the proposed non-substantive technical and conforming changes would remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the governing documents. The proposed non-substantive amendments also would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency and clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the corporate governance of the Exchange.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[25] and Rule 19b–4(f)(6) thereunder.[26]

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)[27] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2023–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2023–10. 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 (*https://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

[24] *See* Second Amended and Restated Bylaws of NYSE Chicago, Inc., Article II, Section 1 (Powers) and Article IX, Section 1 (Management of the Corporation); Thirteenth Amended and Restated Operating Agreement of NYSE, Article II, Section 2.03(k); Twelfth Amended and Restated Operating Agreement of NYSE American, Inc., Article II, Section 2.03(k) (Board); Bylaws of NYSE Arca, Inc., Article III, Section 3.01 (Powers); and Seventh Amended and Restated By-laws of NYSE National, Inc., Article III, Section 3.1 (Powers) and Article X, Section 10.1 (Management of the Exchange).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[27] 15 U.S.C. 78s(b)(2)(B).

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2023–10, and should be submitted on or before April 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05036 Filed 3–10–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97059; File No. SR–NYSENAT–2023–08]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Certificate of Incorporation and Bylaws

March 7, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 23, 2023, NYSE National, Inc. (''NYSE National'' 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its certificate of incorporation and bylaws to provide that the board of directors of its ultimate parent, or that board's compensation committee, may fix the compensation of the board of directors of the Exchange, and make certain clarifying, technical and conforming changes. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Amended and Restated Certificate of Incorporation (''Certificate'') and the Seventh Amended and Restated By-laws of the Exchange (''Exchange Bylaws'') to (a) provide that the board of directors of its ultimate parent, Intercontinental Exchange, Inc. (''ICE,'' and its board of directors, the ''ICE Board''), or the compensation committee of the ICE Board (the ''ICE Compensation Committee''), may fix the compensation of the Board of Directors of the Exchange (the ''Exchange Board''), and (b) make certain clarifying, technical and conforming changes.

The changes described herein would become operative upon the Certificate becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

Proposed Compensation Amendments

Currently, pursuant to Exchange Bylaws Article III, Section 3.15 (Compensation), the sole stockholder of the Exchange, NYSE Group Inc. (''NYSE Group''), has the authority to fix the compensation of all directors for services to the Exchange.[4] Through the deletion of Exchange Bylaws Section 3.15 and additions to Certificate Section FIFTH, the Exchange proposes to move the compensation provision to the Certificate and have the ICE Board or ICE Compensation Committee set director compensation instead of NYSE Group.[5]

NYSE Group is wholly owned by NYSE Holdings LLC, which is a wholly owned subsidiary of Intercontinental Exchange Holdings, Inc. Intercontinental Exchange Holdings, Inc. is in turn wholly owned by ICE, a public company listed on the New York Stock Exchange LLC (''NYSE'').[6]

The Exchange proposes to amend Section FIFTH of the Certificate as follows:

- The Exchange proposes to add the following sentence to the end of Section FIFTH(a):

Notwithstanding anything herein to the contrary, as set forth below, the Board of Directors of Intercontinental Exchange, Inc. (''ICE'') or the compensation committee thereof shall have the authority to fix the compensation of directors of the Corporation.

- The Exchange proposes to add a new Section FIFTH(c), which would read as follows:

(c) Compensation. The Board of Directors of ICE or the compensation committee thereof shall have the authority to fix the compensation of directors of the Corporation. The directors of the Corporation may be paid their expenses, if any, of attendance at each meeting of the Board of Directors of the Corporation and may be paid a fixed sum for attendance at each meeting of the Board of Directors of the Corporation or a stated salary as director (which amounts may be paid in cash or such other form as the Board of Directors of ICE or the compensation committee thereof may from time to time authorize). No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

The Exchange proposes to delete Exchange Bylaws Article III, Section 3.15 in its entirety.

As a result of the proposed change, compensation for the Exchange Board

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Bylaws, Article III, Section 3.15.

[5] Under the Delaware General Corporation Law (''DGCL''), the terms of the certificate of incorporation of a corporation supersede any inconsistent bylaw provisions. *See* DGCL Section 109(b); *see also Sinchareonkul* v. *Fahnemann*, 2015 WL 292314, at *6 (Del.Ch., 2015) (stating that ''when evaluating corporate action for legal compliance, a court examines whether the action contravenes the entity-specific corporate contract. The components of that contract form a hierarchy, comprising from top to bottom (i) the Delaware General Corporation Law (the 'DGCL'), (ii) the certificate of incorporation, and (iii) the bylaws. Each of the lower components of the contractual hierarchy must conform to the higher components.'').

[6] *See* Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR–NSX–2016–16) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1, in Connection With a Proposed Acquisition of the Exchange by NYSE Group, Inc.).

members would be fixed by a body that is required to have at least a majority of its members be independent.

Currently, the board of directors of NYSE Group is not required to be independent. This was not always true: when the New York Stock Exchange, Inc. combined with Archipelago Holdings, Inc. under NYSE Group in 2006, NYSE Group was publicly traded, required to have an independent board of directors, and subject to an independence policy.[7] That changed when NYSE Group combined with Euronext N.V. After that combination, NYSE Euronext, the publicly traded parent company, had an independent board of directors subject to an independence policy, and the board of directors of NYSE Group, which became a subsidiary of NYSE Euronext, did not.[8]

When ICE acquired NYSE Euronext, the requirement to have a majority of independent directors moved to ICE.[9] The requirement is in accordance with NYSE listing requirements, which require that listed companies have a majority of independent directors.[10] Accordingly, if the ICE Board fixed the compensation of the Exchange Board, the decision would be made by a body that required to have at least a majority of its members be independent.

If the ICE Compensation Committee fixed the Exchange Board compensation,[11] compensation decisions would be made by a body that is made up of independent members. As a company listed on the NYSE, ICE is required to have a compensation committee that is composed entirely of independent directors that satisfy the additional independence requirements specific to compensation committee members.[12]

The proposed rule text is more comprehensive than the Exchange Bylaws provision it would replace since, unlike Exchange Bylaws Section 3.15, it would provide that directors may receive compensation on a per-meeting basis or as a salary and clarify the form of compensation that may be granted.

As a result of the proposed change, the provision governing director compensation would move from the Exchange Bylaws to the Certificate, which would result in a change to what body can approve changes to the relevant provision. More specifically, Bylaw Section 3.15 may be amended by the Board or by action of NYSE Group, as the stockholder of the Exchange. By contrast, the Certificate can be amended by the Corporation but first must be approved by the Board. Accordingly, any change proposed to the compensation provision would require Board approval and could no longer be amended by action of the NYSE Group.

The Exchange operates as a separate self-regulatory organization and has rules, and membership rosters distinct from the rules, membership rosters and listings of its affiliates the NYSE, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (collectively with the Exchange, the ''NYSE Group Exchanges''). At the same time, however, the Exchange believes it is important for each of the NYSE Group Exchanges to have a consistent approach to corporate governance in certain matters, to simplify complexity and create greater consistency among the NYSE Group Exchanges.[13] To that end, each of the NYSE Group Exchanges is proposing a substantially similar change to its governing documents.[14]

The proposed amendment is based on Article III, Section 3.13 (Compensation of Directors) of the ICE Bylaws.[15]

Additional Proposed Amendments

The Exchange proposes to make the following non-substantive technical and conforming changes to the Certificate:[16]

- In the first paragraph, change ''NYSE NATIONAL, INC.'' to ''NYSE National, Inc.''
- In Sections EIGHTH and ELEVENTH, add ''Amended and Restated'' before ''Certificate of Incorporation.''
- Update the date in the signature line.

In a non-substantive change, the Exchange proposes to update the title of the Exchange Bylaws to make them the ''Eighth Amended and Restated By-laws of NYSE National, Inc.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[17] in general, and furthers the objectives of

[7] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 3, and 5 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 6 and 8 Relating to the NYSE's Business Combination With Archipelago Holdings, Inc.). The NYSE Group was expected to fix the compensation of the Exchange Board through a compensation committee. *Id.* at 11256.

[8] *See* Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) (Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Regarding the Proposed Combination Between NYSE Group, Inc. and Euronext N.V.). *See also* Exhibit 5E to SR–NYSE–2006–120, Section 3.2 (deleting the independence requirements for the NYSE Group board of directors).

[9] *See* Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE–2013–42; SR–NYSEMKT–2013–50; SR–NYSEArca–2013–62) (Order Granting Approval of Proposed Rule Change Relating to a Corporate Transaction in which NYSE Euronext Will Become a Wholly-Owned Subsidiary of IntercontinentalExchange Group, Inc.). IntercontinentalExchange Group, Inc., subsequently changed its name to IntercontinentalExchange, Inc. *See* Exchange Act Release No. 72158 (May 13, 2014), 79 FR 28784 (May 19, 2014) (SR–NYSE–2014–23) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Name Changes of Its Ultimate Parent, IntercontinentalExchange Group, Inc., and Its Indirect Parents, IntercontinentalExchange, Inc. and NYSE Euronext Holdings LLC). The ICE Board is subject to the requirements of the Independence Policy of the Board of Directors of Intercontinental Exchange, Inc., available at *https://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/ICE-Independence-Policy.pdf.* The bylaws of ICE require that the members of the ICE Board take into consideration the effect that ICE's actions would have on the ability of the Exchange to carry out its responsibility under Exchange Act. *See* Ninth Amended and Restated Bylaws of Intercontinental Exchange, Inc. (''ICE Bylaws''), Article III, Section 3.14. The ICE Bylaws are available at *https://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/2022/ICE-Ninth-Amended-and-Restated-Bylaws.pdf.*

[10] *See* NYSE Listed Company Manual Sections 303A.01 (Independent Directors) and 303A.02(a)(ii) (Independence Tests), and ICE Bylaws, Article III, Section 3.4.

[11] Pursuant to its Charter, the Compensation Committee of the ICE Board is charged with, among other things, reviewing and approving compensation for the members of the board of directors of any ICE subsidiary, which includes the Exchange. *See* Charter of the Compensation Committee of the Board of Directors of ICE, at *https://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/2022/Intercontinental-Exchange-Inc.-Compensation-Committee-Charter-March-3-2022.pdf. See also* NYSE Listed Company Manual Section 303A.05(b).

[12] *See* NYSE Listed Company Manual Section 303A.05(a) (Compensation Committee). *See also* NYSE Listed Company Manual Section 303A.02(a)(ii) and ICE annual report on Form 10–K for the fiscal year ended December 31, 2021, at 19, available at *https://www.sec.gov/ix?doc=/Archives/edgar/data/1571949/000157194922000006/ice-20211231.htm.*

[13] *See* Exchange Act Release No. 84644 (November 21, 2018), 83 FR 61177 (November 28, 2018) (SR–NYSENAT–2018–24) (Notice of Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Certificate of Incorporation and Bylaws).

[14] *See* SR–NYSE–2023–13; SR–NYSEAmer–2023–15, SR–NYSEArca–2023–18, and SR–NYSECHX–2023–10. Presently, three different entities fix the compensation of the boards of directors of the NYSE Group Exchanges: NYSE Group fixes the compensation of the directors of NYSE National, the NYSE, and NYSE American LLC; NYSE Chicago Holdings, Inc. fixes the compensation of the directors of NYSE Chicago, Inc.; and the board of directors of NYSE Arca, Inc. fixes its own compensation.

[15] *See* ICE Bylaws, Article III, Section 3.13.

[16] *See* 83 FR 61177, note 13, *supra* (proposing to make conforming and non-substantive changes to the title, cover page, and table of contents of the Fifth Amended and Restated Bylaws of the Exchange and Amended and Restated Certificate of Incorporation of the Exchange).

[17] 15 U.S.C. 78f(b).

Section 6(b)(1)[18] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[19] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would allow the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members, because the Exchange Board would no longer have its compensation fixed by a body whose members are not subject to independence requirements. The Exchange believes that it is more advisable to have compensation determinations made by a body that is required to have at least a majority of its members be independent, like the ICE Board or ICE Compensation Committee. Otherwise, the compensation could be fixed by a body that is made up of employees or persons related to the Exchange. Indeed, the change would be consistent with prior practice, as immediately after the combination between New York Stock Exchange, Inc. and Archipelago Holdings, Inc., the members of the board of directors of NYSE Group were both subject to independence requirements and expected to fix the compensation of the Exchange Board through a compensation committee.[20] For the same reason, the Exchange believes that the change would contribute to the orderly operation of the Exchange and would promote the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

The Exchange believes that, because at least a majority of the members of the ICE Board and all of the ICE Compensation Committee must be independent, there is no substantial likelihood of a potential conflict of interest. Indeed, the Exchange believes that the proposal lessens the potential for conflicts of interest by eliminating the fixing of compensation by an entity that is not subject to any independence requirements. Further, the governing documents of ICE require that the members of the ICE Board take into consideration the effect that ICE's actions—including actions by the ICE Board or ICE Compensation Committee—would have on the ability of the Exchange ''to carry out [its] responsibilities under the Exchange Act'' and ''to engage in conduct that fosters and does not interfere with the ability of the Exchange[ ] . . . to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and . . . to protect investors and the public interest.''[21] For the foregoing reasons, the Exchange believes that the proposed change would allow the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members, and would contribute to the orderly operation of the Exchange and would promote the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

The Exchange believes that moving the provision governing director compensation from the Exchange Bylaws to the Certificate would allow the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members, and would contribute to the orderly operation of the Exchange and would promote the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest, because any change proposed to the compensation provision would require Board approval. As a result, any change to the compensation provision in the Certificate would have to be approved by a body subject to the requirements that at least half of the directors of the Exchange be independent and at least 20% of them must be individuals nominated by the permit holders of the Exchange.[22] The provision would not be able to be amended by NYSE Group alone, whose directors are not subject to independence requirements.

Moreover, the Exchange believes that the proposal would promote greater consistency in the compensation philosophy and director compensation structure across affiliated exchanges, thereby promoting the maintenance of a fair and orderly markets, the protection of investors and the public interest. As noted above, the other NYSE Group Exchanges are filing similar proposed changes to their governing documents. By locating the authority to fix compensation in the hands of the ICE Board or the ICE Compensation Committee, the proposed change would permit compensation for each board of directors of an NYSE Group Exchange to be set centrally and with greater uniformity and consistency across affiliated exchanges. The Exchange believes that such conformity would streamline the NYSE Group Exchanges' corporate processes and create more equivalent compensation processes among them, to the benefit of both investors and the public interest. The proposal also reflects the fact that, no matter the size or role of the relevant NYSE Group Exchange, every NYSE Group Exchange board of directors must manage its business while considering the government of the exchange as an ''exchange'' within the meaning of the Exchange Act.[23]

The Exchange believes that the more comprehensive provision would remove impediments to and perfect the mechanism of a free and open market, as it would make the provision relating to director compensation more comprehensive and transparent for market participants, making it so that

[18] 15 U.S.C. 78f(b)(1).

[19] 15 U.S.C. 78f(b)(5).

[20] 71 FR 11251, *supra* note 7, at 11256 (''It is expected that, upon completion of the Merger, the NYSE Group board of directors will have [a] . . . compensation committee'') and 11257 (''[T]he board of directors of New York Stock Exchange LLC is not expected to have its own committees and that any necessary functions with respect to . . . compensation . . . will be performed by the relevant committee[ ] of the NYSE Group board of directors'').

[21] *See* ICE Bylaws, Article III, Section 3.14(a). Although it is not currently a listing market, the Exchange has adopted a rule prohibiting the listing of affiliate securities and setting forth additional reporting requirements. *See* Rule 3.1 (Additional Requirements for Listed Securities Issued by Intercontinental Exchange, Inc. or its Affiliates).

[22] *See* Exchange Bylaws, Article III, Section 3.2(a) (General Composition).

[23] *See* By-laws, Article III, Section 3.1 (Powers) and Article X, Section 10.1 (Management of the Exchange); Thirteenth Amended and Restated Operating Agreement of NYSE, Article II, Section 2.03(k); Twelfth Amended and Restated Operating Agreement of NYSE American, Inc., Article II, Section 2.03(k) (Board); Bylaws of NYSE Arca, Inc., Article III, Section 3.01 (Powers); and Second Amended and Restated Bylaws of NYSE Chicago, Inc., Article II, Section 1 (Powers) and Article IX, Sec. 1 (Management of the Corporation).

they can more easily navigate and understand the governing documents. As noted, the proposed text is more comprehensive than the provision it would replace and would set forth additional detail regarding the compensation that directors may receive, such as whether directors may receive compensation on a per-meeting basis or as a salary and what form of compensation may be granted. The Exchange believes that the greater additional detail would add transparency and clarity to the Exchange's governing documents and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency and clarity, thereby reducing potential confusion.

Finally, the proposed non-substantive technical and conforming changes would remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the governing documents. The proposed non-substantive amendments also would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency and clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the corporate governance of the Exchange.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [24] and Rule 19b–4(f)(6) thereunder.[25]

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) [26] 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–NYSENAT–2023–08 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–NYSENAT–2023–08. 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–NYSENAT–2023–08, and should be submitted on or before April 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

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[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97053; File No. SR–NYSEARCA–2023–20]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Adopt New NYSE Arca Rule 5.3–E(p) To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

March 7, 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 24, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rule 5.3–E(p) to require issuers to develop and implement a policy providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 26, 2022, the Securities and Exchange Commission (''SEC'') adopted a new rule and rule amendments [4] to implement Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''),[5] which added Section 10D to the Act.[6] In accordance with Section 10D of the Act, the final rules direct the national securities exchanges and associations that list securities to establish listing standards that require each issuer to develop and implement a policy providing for the recovery, in the event of a required accounting restatement, of incentive-based compensation received by current or former executive officers where that compensation is based on the erroneously reported financial information. The listing standards must also require the disclosure of the policy. Additionally, the final rules require a listed issuer to file the policy as an exhibit to its annual report and to include other disclosures in the event a recovery analysis is triggered under the policy.

Specifically, the rule amendments the SEC adopted pursuant to Section 10D of the Act [7] require specific disclosure of the listed issuer's policy on recovery of incentive-based compensation and information about actions taken pursuant to such recovery policy. Rule 10D–1 requires listing exchanges to require that listed issuers file all disclosures with respect to their recovery policies in accordance with the requirements of the Federal securities laws, including the disclosures required by the applicable SEC filings. The rule amendments require listing exchanges to require each listed issuer to: (i) file their written recovery policies as exhibits to their annual reports; (ii) indicate by check boxes on their annual reports whether the financial statements included in the filings reflect correction of an error to previously issued financial statements and whether any of those error corrections are restatements that required a recovery analysis; and (iii) disclose any actions they have taken pursuant to such recovery policies.

Rule 10D–1 requires that the issuer will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirements under the securities laws. In the adopting release for Rule 10D–1, the SEC states that the issuer and its directors and officers must comply with this requirement in a manner that is consistent with the exercise of their fiduciary duty to safeguard the assets of the issuer (including the time value of any potentially recoverable compensation). The issuer's obligation to recover erroneously awarded incentive based compensation reasonably promptly will be assessed on a holistic basis with respect to each such accounting restatement prepared by the issuer. In evaluating whether an issuer is recovering erroneously awarded incentive-based compensation reasonably promptly, the Exchange will consider whether the issuer is pursuing an appropriate balance of cost and speed in determining the appropriate means to seek recovery, and whether the issuer is securing recovery through means that are appropriate based on the particular facts and circumstances of each executive officer that owes a recoverable amount.

Rule 10D–1 became effective on January 27, 2023. Exchanges are required to file proposed listing standards no later than February 27, 2023, and the listing standards must be effective no later than November 28, 2023. Issuers subject to such listing standards will be required to adopt a recovery policy no later than 60 days following the date on which the applicable listing standards become effective.

Proposed NYSE Arca Rule

NYSE Arca proposes to comply with Rule 10D–1 by adopting proposed Rule 5.3–E(p). Proposed Rule 5.3–E(p) is designed to conform closely to the applicable language of Rule 10D–1. Proposed Rule 5.3–E(p) would prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion thereof.

Implementation

Proposed Rule 5.3–E(p)(B) would establish the timeframe within which listed companies must comply with proposed Rule 5.3–E(p). Specifically:

- Each listed issuer must adopt the recovery policy required by proposed Rule 5.3–E(p) (''Recovery Policy'') no later than 60 days from the adoption of the proposed listing standard (''Effective Date'').
- Each listed issuer must comply with its Recovery Policy for all incentive-based compensation Received (as such term is defined in proposed Rule 5.3–E(p)(E) as set forth below) by executive officers on or after the Effective Date that results from attainment of a financial reporting measure based on or derived from financial information for any fiscal period ending on or after the Effective Date.
- Each listed issuer must provide the required disclosures in the applicable SEC filings required on or after the Effective Date.

Requirements of Proposed Rule

The requirements of proposed Rule 5.3–E(p) would be as follows:

- The issuer must adopt and comply with a written Recovery Policy providing that the issuer will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in

[4] *See* Release Nos. 33–11126; 34–96159; IC–34732; File No. S7–12–15; 87 FR 73076 (November 28, 2022).

[5] 2 Public Law 111–203, 124 Stat. 1900 (2010).

[6] 15 U.S.C. 78j–4.

[7] *See* footnote 5 *supra.*

previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

- The issuer's Recovery Policy must apply to all incentive-based compensation received by a person:
  - After beginning service as an executive officer;
  - Who served as an executive officer at any time during the performance period for that incentive-based compensation;
  - While the issuer has a class of securities listed on a national securities exchange or a national securities association; and
  - During the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement as described in paragraph (C)(1) of proposed Rule 5.3–E(p). In addition to these last three completed fiscal years, the Recovery Policy must apply to any transition period (that results from a change in the issuer's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the issuer's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year. An issuer's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.
- For purposes of determining the relevant recovery period, the date that an issuer is required to prepare an accounting restatement as described in paragraph (C)(1) of Rule 5.3–E(p) is the earlier to occur of:
  - The date the issuer's board of directors, a committee of the board of directors, or the officer or officers of the issuer authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the issuer is required to prepare an accounting restatement as described in paragraph (C)(1) of proposed Rule 5.3–E(p); or
  - The date a court, regulator, or other legally authorized body directs the issuer to prepare an accounting restatement as described in paragraph (C)(1) of proposed Rule 5.3–E(p).
- The amount of incentive-based compensation that must be subject to the issuer's Recovery Policy (''erroneously awarded compensation'') is the amount of incentive-based compensation received that exceeds the amount of incentive-based compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For incentive-based compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement:
  - The amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the incentive-based compensation was received; and
  - The issuer must maintain documentation of the determination of that reasonable estimate and provide such documentation to the Exchange.
- The issuer must recover erroneously awarded compensation in compliance with its Recovery Policy except to the extent that the conditions in one of the three bullets set forth below are met, and the issuer's committee of independent directors responsible for executive compensation decisions, or in the absence of such a committee, a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable.
  - The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the issuer must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to the Exchange.
  - Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the issuer must obtain an opinion of home country counsel, acceptable to the Exchange, that recovery would result in such a violation, and must provide such opinion to the Exchange.
  - Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.
- The issuer is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.

Disclosure in SEC Filings

The issuer must file all disclosures with respect to such Recovery Policy in accordance with the requirements of the Federal securities laws, including the disclosure required by the applicable Commission filings.

General Exemptions

The requirements of proposed Rule 5.3–E(p) would not apply to the listing of:

- A security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act [8] or that is exempt from the registration requirements of section 17A(b)(7)(A); [9]
- A standardized option, as defined in 17 CFR 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act; [10]
- Any security issued by a unit investment trust, as defined in 15 U.S.C. 80a–4(2); (4) Any security issued by a management company, as defined in 15 U.S.C. 80a–4(3), that is registered under section 8 of the Investment Company Act of 1940,[11] if such management company has not awarded incentive-based compensation to any executive officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company.

Definitions Under Proposed Rule 5.3–E(p)

Unless the context otherwise requires, the following definitions apply for purposes of proposed Rule 5.3–E(p):

Executive Officer. An executive officer is the issuer's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Executive officers of the issuer's parent(s) or subsidiaries are deemed executive officers of the issuer if they perform such policy making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78q–1(b)(7)(A).

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 80a–8.

for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an executive officer for purposes of Rule 5.3–E(p) would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b).

Financial reporting measures. Financial reporting measures are measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission.

Incentive-based compensation. Incentive-based compensation is any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure.

Received. Incentive-based compensation is deemed received in the issuer's fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant of the incentive-based compensation occurs after the end of that period.

Delisting

The Exchange proposes to adopt new Rule 5.3–E(p)(F) (''Noncompliance with Rule 5.3–E(p) (Erroneously Awarded Compensation)'').

Proposed Rule 5.3–E(p)(F)(i) would provide that in any case where the Exchange determines that a listed issuer has not recovered erroneously-awarded compensation as required by its Recovery Policy reasonably promptly after such obligation is incurred, trading in all listed securities of such listed issuer would be immediately suspended and the Exchange would immediately commence delisting procedures with respect to all such listed securities. Rule 10D–1 does not specify the time by which the issuer must complete the recovery of excess incentive-based compensation, NYSE Arca would however determine whether the steps an issuer is taking constitute compliance with its compensation Recovery Policy. A listed issuer will be subject to the procedures outlined in Rule 5.5–E(a) with respect to such a delisting determination.

Proposed Rule 5.3–E(p)(F)(ii) would deem a listed issuer to be below standards in the event of any failure by such listed issuer to adopt its required Recovery Policy by the Effective Date (a ''Late Recovery Policy Adoption Delinquency''). The listed issuer would be required to notify the Exchange in writing within five days of the Effective Date if it fails to adopt its Recovery Policy by that date.

Upon the occurrence of a Late Recovery Policy Adoption Delinquency, the Exchange will promptly send written notification (the ''Late Recovery Policy Adoption Delinquency Notification'') to a listed issuer of the procedures set forth below. Within five days of the date of the Late Recovery Policy Adoption Delinquency Notification, the listed issuer will be required to (a) contact the Exchange to discuss the status of the delayed Recovery Policy and (b) issue a press release disclosing the occurrence of the Late Recovery Policy Adoption Delinquency, the reason for the Late Recovery Policy Adoption Delinquency and, if known, the anticipated date such Late Recovery Policy Adoption Delinquency will be cured. If the listed issuer has not issued the required press release within five days of the date of the Late Recovery Policy Adoption Delinquency Notification, the Exchange will issue a press release stating that the issuer has incurred a Late Recovery Policy Adoption Delinquency.

During the six-month period from the date of the Late Recovery Policy Adoption Delinquency (the ''Initial Late Recovery Policy Adoption Cure Period''), the Exchange will monitor the listed issuer and the status of the delayed Recovery Policy, including through contact with the company, until the Late Recovery Policy Adoption Delinquency is cured. If the listed issuer fails to cure the Late Recovery Policy Adoption Delinquency within the Initial Late Recovery Policy Adoption Cure Period, the Exchange may, in the Exchange's sole discretion, allow the company's securities to be traded for up to an additional six-month period (the ''Additional Late Recovery Policy Adoption Cure Period'') depending on the company's specific circumstances. If the Exchange determines that an Additional Late Recovery Policy Adoption Cure Period is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Rule 5.5–E(a). Notwithstanding the foregoing, however, the Exchange may in its sole discretion decide (i) not to afford a listed issuer any Initial Late Recovery Policy Adoption Cure Period or Additional Late Recovery Policy Adoption Cure Period, as the case may be, at all or (ii) at any time during the Initial Late Recovery Policy Adoption Cure Period or Additional Late Recovery Policy Adoption Cure Period, to truncate the Initial Cure Period or Additional Cure Period, as the case may be, and immediately commence suspension and delisting procedures if the listed issuer is subject to delisting pursuant to any other provision of the Rules, including if the Exchange believes, in the Exchange's sole discretion, that continued listing and trading of a company's securities on the Exchange is inadvisable or unwarranted. The Exchange may also commence suspension and delisting procedures without affording any cure period at all or at any time during the Initial Late Recovery Policy Adoption Cure Period or Additional Late Recovery Policy Adoption Cure Period if the Exchange believes, in the Exchange's sole discretion, that it is advisable to do so on the basis of an analysis of all relevant factors.

In determining whether an Additional Late Recovery Policy Adoption Cure Period after the expiration of the Initial Late Recovery Policy Adoption Cure Period is appropriate, the Exchange will consider the likelihood that the delayed Recovery Policy can be adopted during the Additional Late Recovery Policy Adoption Cure Period. If the Exchange determines that an Additional Late Recovery Policy Adoption Cure Period is appropriate and the listed issuer fails to adopt a Recovery Policy by the end of such Additional Late Recovery Policy Adoption Cure Period, suspension and delisting procedures will commence immediately in accordance with the procedures set out in Rule 5.5–E(a). In no event will the Exchange continue to trade a company's securities if that listed issuer has failed to cure its Late Recovery Policy Adoption Delinquency on the date that is twelve months after the commencement of the company's Late Recovery Policy Adoption Delinquency.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that proposed new Rule 5.3–E(p) is consistent with the protection of investors and the public interest because it furthers the goal of ensuring the accuracy of the financial disclosure of listed issuers. Specifically, the Exchange believes the recovery requirement may provide executive officers with an increased incentive to take steps to reduce the likelihood of inadvertent misreporting and will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which we expect will further discourage such behavior. The Exchange believes that these increased incentives may improve the overall quality and reliability of financial reporting, which further benefits investors. The new proposed Rule 5.3–E(p) is also consistent with the requirements of Section 10D of the Act and Rule 10D–1 thereunder, as it would establish a listing standard that is consistent with the requirements of Rule 10D–1.

The Exchange proposes to adopt continued listing standards for proposed Rule 5.3–E(p) in proposed Rule 5.3–E(p)(F). Pursuant to proposed Rule 5.3–E(p)(F)(i), a listed issuer would be subject to immediate suspension and delisting without eligibility for cure periods if the Exchange has determined that the listed issuer has failed to recover reasonably promptly erroneously-awarded compensation as requited by its Recovery Policy. Proposed Rule 5.3–E(p)(F)(ii) would provide compliance periods of up to 12 months for a listed issuer that is delayed in adopting its Recovery Policy. The Exchange believes that the compliance procedures set forth in proposed Rule 5.3–E(p)(F) are appropriately rigorous and are consistent with the public interest and the interests of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Rule 10D–1 under the Act requires all listing exchanges to adopt rules with respect to the recovery of erroneously awarded compensation that are substantively identically to proposed Rule 5.3–E(p).

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2023–20 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–2023–20. 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–2023–20, and should be submitted on or before April 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05033 Filed 3–10–23; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, March 15, 2023 at 10:00 a.m.

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov.*

STATUS: This meeting will begin at 10:00 a.m. and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to propose amendments to rules under Regulation S–P to require brokers and dealers, investment companies, and investment advisers registered with the Commission to adopt written policies and procedures for incident response programs to address unauthorized access to or use of customer information, including procedures for providing timely notification to certain affected

individuals. The proposed amendments would also broaden the scope of information covered under these rules and extend application of these rules to cover transfer agents registered with the Commission or another appropriate regulatory authority. The Commission will also consider whether to propose corresponding amendments to recordkeeping rules under the Securities Exchange Act of 1934 (''Exchange Act''), Investment Company Act of 1940, and Investment Advisers Act of 1940. Finally, the Commission will also consider whether to propose amendments to conform annual privacy notice delivery provisions to the terms of an exception provided by a statutory amendment to the Gramm-Leach-Bliley Act.

2. The Commission will consider whether to propose a new rule and form and certain related rule and exemptive order amendments under the Exchange Act to require certain registrants under the Exchange Act to address their cybersecurity risks through policies and procedures, notification and reporting to the Commission, public disclosure, and record retention. The proposed cybersecurity requirements would apply to broker-dealers, clearing agencies, major security-based swap participants, the Municipal Securities Rulemaking Board, national securities associations, national securities exchanges, security-based swap data repositories, security-based swap dealers, and transfer agents.

3. The Commission will consider whether to propose amendments to Regulation SCI under the Exchange Act to expand the scope of entities subject to Regulation SCI and to update certain provisions of Regulation SCI.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: March 8, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–05138 Filed 3–9–23; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97060; File No. SR–NASDAQ–2023–005]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish Listing Standards Related to Recovery of Erroneously Awarded Executive Compensation

March 7, 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 February 22, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''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 establish listing standards related to recovery of erroneously awarded executive compensation as required by SEC Rule 10D–1.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') added Section 10D to the Securities Exchange Act of 1934.[3] In October 2022, the SEC adopted final Rule 10D–1[4] instructing national securities exchanges to establish specific listing standards that require each issuer to adopt and comply with a written executive compensation recovery policy.[5] Under Rule 10D–1, listed companies must recover from current and former executive officers incentive-based compensation received during the three fiscal years preceding the date on which the issuer is required to prepare an accounting restatement to correct a material error. As required by Rule 10D–1 and the Listing Standards Release, Nasdaq proposes to adopt Listing Rule 5608 (the ''Rule''), titled, recovery of erroneously awarded compensation.

Proposed Listing Rule 5608(a) would introduce the requirements of the Rule in accordance with the Listing Standards Release. Nasdaq also proposes to adopt Listing Rule 5608(b), which sets forth the substantive requirements of Rule 10D–1(b), and Listing Rule 5608(d), which sets forth the defined terms applicable to the Rule. As provided in Rule 10D–1, Nasdaq proposes to define the term ''executive officer'' to include the issuer's president, principal financial officer, principal accounting officer, any vice-president in charge of a principal business unit, division or function and any other person (including executive officers of a parent or subsidiary) who performs similar policy-making functions for the issuer. The term ''policy-making function'' is not intended to include policy-making functions that are not significant.

The recovery of erroneously awarded compensation is required on a ''no fault'' basis, without regard to whether any misconduct occurred or an executive officer's responsibility for the erroneous financial statements. A restatement due to material non-compliance with any financial reporting requirement under the securities laws triggers application of the recovery policy. As explained in the Listing

[3] 15 U.S.C. 78j–4.

[4] 17 CFR 240.10D–1.

[5] Securities Exchange Act Release No. 96159 (October 26, 2022), 87 FR 73076 (November 28, 2022)(''Listing Standards Release'').

Standards Release, the determination regarding materiality of an error should be based on facts and circumstances and existing judicial and administrative interpretations. The proposed Rule requires recovery for restatements that correct errors that are material to previously issued financial statements (commonly referred to as ''Big R'' restatements), as well as for restatements that correct errors that are not material to previously issued financial statements but would result in a material misstatement if the errors were left uncorrected in the current report or the error correction was recognized in the current period (commonly referred to as ''little r'' restatement).

Under the proposed Rule, listed companies will be required to recover the amount of incentive-based compensation received by an executive officer that exceeds the amount the executive officer would have received had the incentive-based compensation been determined based on the accounting restatement. Incentive-based compensation is deemed received [6] in the fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the grant or payment of the incentive-based compensation occurs after the end of that period. For incentive-based compensation based on stock price or total shareholder return, companies can use a reasonable estimate of the effect of the restatement on the applicable measure to determine the amount to be recovered.

As provided in Rule 10D–1, Nasdaq proposes to define the term ''Incentive-based compensation'' to mean any compensation that is granted, earned or vested based wholly or in part upon the attainment of any financial reporting measure. The term ''financial reporting measures'' is defined as measures that are determined and presented in accordance with the accounting principles used in an issuer's financial statements, and any measures that are derived wholly or in part from such measures, as well as an issuer's stock price and total shareholder return. Equity awards that vest exclusively upon completion of a specified employment period, without any performance condition, and bonus awards that are discretionary or based on subjective goals or goals unrelated to financial reporting measures, do not constitute incentive-based compensation.[7] Incentive-based compensation received by an executive officer before the issuer had a class of securities listed on a national securities exchange or a national securities association would not be subject to the compensation recovery policy.

As also provided in Rule 10D–1, Nasdaq proposes to set forth the circumstances where listed companies would have limited discretion not to recover the excess incentive-based compensation. Specifically, Nasdaq proposes to provide that a company is required to recover compensation in compliance with its recovery policy, except to the extent that pursuit of recovery would be impracticable because: (1) the direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered, (2) recovery would violate home country law, where that law was adopted prior to November 28, 2022, based on an opinion of counsel acceptable to Nasdaq or (3) recovery would cause a broad-based retirement plan to fail to meet the tax-qualification requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder. Before concluding that pursuit is impracticable, a company must first make a reasonable attempt to recover the incentive-based compensation and provide that documentation to Nasdaq. The listed company's board is required to apply on a ''no fault'' basis any recovery policy consistently to executive officers and a listed company is prohibited from indemnifying any current or former executive officer for recovered compensation.

As provided in Rule 10D–1, Nasdaq proposes to require each listed company to file all disclosures with respect to its erroneously awarded executive compensation recovery policy in accordance with the requirements of the Federal securities laws, including the disclosure required by the applicable Commission filings. As explained in the Listing Standards Release, each listed company is required to file its compensation recovery policy as an exhibit to its Exchange Act annual report. In addition, the Commission's rules require disclosure pursuant to Item 402 of Regulation S–K of the following items, among others, if, during the prior fiscal year, either a triggering restatement occurred or any balance of excess incentive-based compensation was outstanding:

- The date on which the listed issuer was required to prepare an accounting restatement and the aggregate dollar amount of erroneously awarded compensation attributable to such accounting restatement (including an analysis of how the recoverable amount was calculated) or, if the amount has not yet been determined, an explanation of the reasons and disclosure of the amount and related disclosures in the next filing that is subject to Item 402 of Regulation S–K;
- The aggregate dollar amount of erroneously awarded compensation that remains outstanding at the end of its last completed fiscal year;
- If the financial reporting measure related to a stock price or total shareholder return metric, the estimates used to determine the amount of erroneously awarded compensation attributable to such accounting restatement and an explanation of the methodology used for such estimates;
- If recovery would be impracticable pursuant to Rule 10D–1(b)(1)(iv), for each current and former named executive officer and for all other current and former executive officers as a group, disclose the amount of recovery forgone and a brief description of the reason the listed registrant decided in each case not to pursue recovery; and
- For each current and former named executive officer, disclose the amount of erroneously awarded compensation still owed that had been outstanding for 180 days or longer since the date the issuer determined the amount owed.

The additional disclosure requirements apply immediately following the effective date of the applicable listing standards.

Covered Companies

As provided in Rule 10D–1, Nasdaq proposes to apply the proposed listing standards related to recovery of erroneously awarded executive compensation to all listed companies (including but not limited to, foreign private issuers, emerging growth companies, smaller reporting companies, controlled companies and issuers of listed debt whose stock is not also listed) except for certain registered investment companies to the extent they do not provide incentive-based compensation to their employees. As provided in Rule 10D–1, Nasdaq proposes to adopt Listing Rule 5608(c) to provide certain exemptions from the requirements related to recovery of erroneously awarded executive compensation. Specifically Rule 5608(c) will exempt any security issued by a unit investment trust, as defined in 15 U.S.C. 80a–4(2); and any security issued by a management company, as defined in 15 U.S.C. 80a–4(3), that is registered under section 8 of the Investment

[6] Nasdaq proposes to define the term ''received'' as provided in Rule 10D–1.

[7] *See* the Listing Standards Release, at 73094.

Company Act of 1940 (15 U.S.C. 80a–8), if such management company has not awarded incentive-based compensation to any executive officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company.

For clarity, Nasdaq proposes to amend Listing Rule 5210 to indicate that any company newly listing on Nasdaq must comply with the requirements of proposed Listing Rule 5608 (Recovery of Erroneously Awarded Compensation). Nasdaq also proposes to similarly amend Listing Rule 5701 governing listing requirements for ''other securities,'' and Listing Rule 5702 governing listing requirements for ''debt securities.''

Compliance With Compensation Recovery Policy

As described above, Nasdaq proposes to require that a company will be subject to delisting if it does not adopt a compensation recovery policy that complies with the applicable listing standard, disclose the policy in accordance with Commission rules or comply with the policy's recovery provisions. Rule 10D–1 requires that a listed company recover the amount of erroneously awarded incentive-based compensation reasonably promptly,[8] but does not specify the time by which the issuer must complete the recovery of excess incentive-based compensation; rather, Nasdaq would determine whether the steps an issuer is taking constitute compliance with its compensation recovery policy. The issuer's obligation to recover erroneously awarded incentive-based compensation reasonably promptly will be assessed on a holistic basis with respect to each such accounting restatement prepared by the issuer. In evaluating whether an issuer is recovering erroneously awarded incentive-based compensation reasonably promptly, the Exchange will consider whether the issuer is pursuing an appropriate balance of cost and speed in determining the appropriate means to seek recovery, and whether the issuer is securing recovery through means that are appropriate based on the particular facts and circumstances of each executive officer that owes a recoverable amount.

Nasdaq proposes to amend Listing Rule 5810(c)(2)(A)(iii) to provide that a company that failed to comply with proposed Listing Rule 5608 is required to submit to Nasdaq Staff a plan to regain compliance. The administrative process for such deficiencies will follow the established pattern used for similar corporate governance deficiencies, and would allow Nasdaq Staff to provide the issuer up to 180 days to cure the deficiency. Thereafter, Nasdaq Staff would be required to issue a delisting letter,[9] which the issuer could appeal to the Hearings Panel, as provided in Listing Rule 5815. The Hearings Panel could allow the issuer up to an additional 180 days to cure the deficiency.

Implementation and Transition

As provided in Rule 10D–1, Nasdaq proposes to require that each Company is required to (i) adopt a policy governing the recovery of erroneously awarded compensation as required by this rule no later than 60 days following the effective date of this rule, and (ii) provide the disclosures required by this rule and in the applicable Commission filings on or after the effective date of this rule. Notwithstanding the look-back requirement in Rule 5608(b)(1)(i)(D), as provided in the Listing Standards Release, Nasdaq proposes to provide that a company is only required to apply the recovery policy to incentive-based compensation received on or after the effective date of this rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

As required by the Dodd-Frank Act and Rule 10D–1, Nasdaq is proposing amendments to its listing rules relating to recovery of erroneously awarded executive compensation. These proposals are, generally, required by SEC Rule 10D–1. Nasdaq believes that these proposals protect investors and the public interest by requiring companies, with certain exemptions, that, in the event the company is required to prepare an accounting restatement, the company will recover reasonably promptly erroneously awarded incentive-based compensation paid to its current or former executive officers based on any misstated financial reporting measure. Nasdaq also believes that these new requirements will help facilitate effective oversight of executive compensation and promote accountability to investors by not allowing executive officers to retain compensation that they were awarded erroneously. Finally, Nasdaq agrees with the Commission that the recovery requirement may provide executive officers with an increased incentive to take steps to reduce the likelihood of inadvertent misreporting and will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which the Commission expects will further discourage such behavior.[12]

Nasdaq believes that the proposal to amend Listing Rule 5810(c)(2)(A)(iii) to provide that a company that failed to comply with proposed Listing Rule 5608 is required to submit to Nasdaq Staff a plan to regain compliance and be subject to the appeal process described above, is consistent with the investor protection objectives of Section 6(b)(5) of the Act[13] because the administrative process for such deficiencies will follow the established pattern used for similar corporate governance deficiencies and Nasdaq has developed expertise administering this process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments would not impose any burden on competition, not necessary or appropriate in furtherance of the purposes of the Act, because the proposed listing standards will apply to all listed companies, except in limited circumstances described above, as required by the Dodd-Frank Act and the SEC Rule 10D–1.

[8] In that regard, the Commission stated that it ''recognize[s] that what is reasonable may depend on the additional cost incident to recovery efforts. [The Commission] expect[s] that issuers and their directors and officers, in the exercise of their fiduciary duty to safeguard the assets of the issuer (including the time value of any potentially recoverable compensation), will pursue the most appropriate balance of cost and speed in determining the appropriate means to seek recovery.'' The Listing Standards Release, at 73104.

[9] Listing Rule 5810 provides that notifications of deficiencies that allow for submission of a compliance plan may result, after review of the compliance plan, in issuance of a Staff Delisting Determination or a Public Reprimand Letter. However Nasdaq believes that issuance of a Public Reprimand Letter is inconsistent with the provisions of Rule 10D–1 and, therefore, proposes to amend Listing Rule 5805(j) to provide that a Public Reprimand Letter may not be issued for violations of a listing standard required by Rule 10D–1. Nasdaq also proposes to modify Listing Rules 5810–5825 accordingly.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* the Listing Standards Release, at 73077.

[13] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–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–NASDAQ–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–NASDAQ–2023–005, and should be submitted on or before April 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05040 Filed 3–10–23; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–1254]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: FAA Airport Data and Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 23, 2022. The collection involves aeronautical information the FAA uses to carry out agency missions related to flight safety, flight planning, airport engineering and federal grant analysis, airport actions, aeronautical chart and flight information publications, and the promotion of air commerce as required by statute. The information will be used to process airport actions, studies, and analyses and for use when considering funding requests and published in flight information handbooks and charts for pilot use. We have renamed and updated the collection, previously called the FAA Airport Master Record, to incorporate several related tools using this data that are made available and processed via the same online system—the Airport Data and Information Portal (ADIP).

DATES: Written comments should be submitted by April 12, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Andrew Goldsmith by email at: *Andrew.E.Goldsmith@faa.gov;* phone: 202–267–6549.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0015.

Title: FAA Airport Data and Information.

Form Numbers: 5010–1, 5010–2, 5010–3, 5010–4.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 23, 2022 (87 FR 58178). 49 U.S.C. 329(b) empowers and directs the Secretary of Transportation to collect and disseminate information on civil aeronautics. Aeronautical information is required by the FAA to carry out agency missions agency missions related to flight safety, flight planning, airport engineering and federal grant analysis, aeronautical studies and airport actions, aeronautical chart and flight information publications, and the promotion of air commerce as required by statute. The existing FAA Airport Master Record is now fully online and part of a suite of tools using aeronautical data to support

the origination and distribution of airport data and information. Modules include the Airports Geographic Information System (AGIS), Airport Master Record (AMR), Modification of Standards (MOS), Runway Airspace Management (RAM), and Runway Safety Area Inventory (RSAI) as well as Registration. The burden per respondent will depend on which module or modules the respondent is using as well as the complexity of submitted projects.

We have renamed and updated the collection, previously called the FAA Airport Master Record, to reflect the consolidation of these tools and processes into a single online system—the Airport Data and Information Portal (ADIP). ADIP provides airports with direct access to their data and the ability to submit changes to it according to defined business rules. We are cancelling the PDF forms previously used to collect Airport Master Record data as they are no longer used for any collection activities.

Respondents: Approximately 8,000 airport owners/managers, consultants, and other members of the public.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1–16 hours, depending on the module and complexity of the project.

Estimated Total Annual Burden: 14,219 hours for all submissions.

Issued in Washington, DC.

Andrew Goldsmith,

Aeronautical Information Specialist, Airport Data and Airspace Branch, Office of Airport Safety and Standards.

[FR Doc. 2023–05072 Filed 3–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Retail Foreign Exchange Transactions

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on the renewal of an information collection as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning renewal of an information collection titled ''Retail Foreign Exchange Transactions.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before April 12, 2023.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0250, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0250'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* You can find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0250'' or ''Retail Foreign Exchange Transactions''. Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks the OMB to extend its approval of the collection in this notice.

Title: Retail Foreign Exchange Transactions.

OMB Control No.: 1557–0250.

Type of Review: Regular.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 15.

Total Annual Burden: 22,418 hours.

Abstract:

Background

The OCC's rule pertaining to retail foreign exchange transactions (''retail forex'') (12 CFR part 48) allows national banks and Federal savings associations to offer or enter into retail foreign exchange transactions. In order to engage in these transactions, institutions must comply with various reporting, disclosure, and recordkeeping requirements included in that rule.

Reporting Requirements

The reporting requirements in 12 CFR 48.4 state that, prior to initiating a retail forex business, a national bank or Federal savings association must provide the OCC with prior notice and obtain a written supervisory no-objection letter. In order to obtain a supervisory no-objection letter, a national bank or Federal savings association must have written policies,

procedures, and risk measurement and management systems and controls in place to ensure that retail forex transactions are conducted in a safe and sound manner. The national bank or Federal savings association also must provide other information required by the OCC, such as documentation of customer due diligence, new product approvals, and haircuts applied to noncash margins.

Disclosure Requirements

Under 12 CFR 48.5, a national bank or Federal savings association must promptly provide the customer with a statement reflecting the financial result of the transactions and the name of any introducing broker to the account. The institution must follow the customer's specific instructions on how the offsetting transaction should be applied.

Twelve CFR 48.6 requires that a national bank or Federal savings association furnish a retail forex customer with a written disclosure before opening an account through which the customer will engage in retail forex transactions. It further requires a national bank or Federal savings association to secure an acknowledgment from the customer that the disclosure was received and understood. Finally, the section requires a national bank or Federal savings association to disclose its profitable accounts ratio and its fees and other charges.

Twelve CFR 48.10 requires a national bank or Federal savings association to issue monthly statements to each retail forex customer and send confirmation statements following transactions.

Twelve CFR 48.13(c) prohibits a national bank or Federal savings association engaging in retail forex transactions from knowingly handling the account of any related person of another retail forex counterparty unless it receives proper written authorization, promptly prepares a written record of the order, and transmits to the counterparty copies of all statements and written records. Twelve CFR 48.13(d) prohibits a related person of a national bank or Federal savings association engaging in retail forex transactions from having an account with another retail forex counterparty unless it receives proper written authorization and copies of all statements and written records for such accounts are transmitted to the counterparty.

Twelve CFR 48.15 requires a national bank or Federal savings association to provide a retail forex customer with 30 days prior notice of any assignment of any position or transfer of any account of the retail forex customer. It also requires a national bank or Federal savings association to which retail forex accounts or positions are assigned or transferred to provide the affected customers with risk disclosure statements and forms of acknowledgment and obtain the signed acknowledgments within 60 days.

The customer dispute resolution provisions in 12 CFR 48.16 require certain endorsements, acknowledgments, and signatures. The section also requires that a national bank or Federal savings association, within 10 days after receipt of notice from the retail forex customer that the customer intends to submit a claim to arbitration, provide the customer with a list of persons qualified in the dispute resolution.

Policies and Procedures; Recordkeeping

Twelve CFR 48.7 and 48.13 require that a national bank or Federal savings association engaging in retail forex transactions keep full, complete, and systematic records and to establish and implement internal rules, procedures, and controls. Section 48.7 also requires that a national bank or Federal savings association keep account, financial ledger, transaction, and daily records, as well as memorandum orders, post-execution allocation of bunched orders, records regarding its ratio of profitable accounts, possible violations of law, records for noncash margin, and monthly statements and confirmations. Twelve CFR 48.9 requires policies and procedures for haircuts for noncash margin collected under the rule's margin requirements and annual evaluation and, if appropriate, modification of the haircuts.

On October 25, 2022, the OCC published a notice for 60 days of comment concerning the collection, 87 FR 64543. No comments were received. Comments continue to be solicited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2023–05080 Filed 3–10–23; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Assessment of Fees

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''Assessment of Fees.'' The OCC also is giving notice that the collection has been sent to OMB for review.

DATES: You should submit written comments by April 12, 2023.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0223, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0223'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public

disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* You can find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

On August 11, 2022, the OCC published a 60-day notice for this information collection, (87 FR 49651). No comments were received. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

• *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0223'' or ''Assessment of Fees.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501*et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, and/or provide information to a third party. The OCC asks that OMB extend its approval of the collection in this notice.

Title: Assessment of Fees.

OMB Control No.: 1557–0223.

Affected Public: Business or other for-profit.

Type of Review: Regular review.

Abstract: The OCC is requesting comment on its proposed extension, without change, of the information collection titled, ''Assessment of Fees.'' The OCC is authorized by the National Bank Act (for national banks and Federal branches and agencies) and the Home Owners' Loan Act (for Federal savings associations) to collect assessments, fees, and other charges as necessary or appropriate to carry out the responsibilities of the OCC. 12 U.S.C. 16, 481, 482 and 1467. The OCC requires independent credit card national banks and independent credit card Federal savings associations (collectively, independent credit card institutions) to pay an additional assessment based on receivables attributable to accounts owned by the national bank or Federal savings association. 12 CFR 8.2(c). Independent credit card institutions are national banks or Federal savings associations that engage primarily in credit card operations and are not affiliated with a full-service national bank or full-service Federal savings association. 12 CFR 8.2(c)(3)(vi) and (vii). Under 12 CFR 8.2(c)(2), the OCC also has the authority to assess an independent credit card institution that is affiliated with a full-service national bank or full-service Federal savings association if the OCC concludes that the affiliation is intended to evade the requirements of 12 CFR part 8.

The OCC requires independent credit card institutions to report receivables attributable data to the OCC semiannually or at a time specified by the OCC. 12 CFR 8.2(c)(4). ''Receivables attributable'' are the total amount of outstanding balances due on credit card accounts owned by independent credit card institutions (the receivables attributable to those accounts) on the last day of an assessment period minus receivables retained on the national bank or Federal savings association's balance sheet as of that day. 12 CFR 8.2(c)(3)(viii). The OCC uses the information to calculate the assessment for each national bank and Federal savings association and adjust the assessment rate for independent credit card institutions over time.

Estimated Number of Respondents: 7.

Estimated Total Annual Burden: 14 hours.

Comments: On August 11, 2022, the OCC published a 60-day notice for this information collection, (87 FR 49651). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2023–05077 Filed 3–10–23; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, March 30, 2023.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Thursday, March 30, 2023, at 2:30 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting,

notification of intent to participate must be made with Rosalind Matherne. For more information, please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 7, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–05059 Filed 3–10–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, March 28, 2023.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Tuesday, March 28, 2023, at 11 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information, please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *https://www.improveirs.org.*

Dated: March 7, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–05054 Filed 3–10–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, March 30, 2023.

FOR FURTHER INFORMATION CONTACT: Ann Tabat at 1–888–912–1227 or (602) 636–9143.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Thursday, March 30, 2023, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Ann Tabat. For more information, please contact Ann Tabat at 1–888–912–1227 or (602) 636–9143, or write TAP Office, 4041 N Central Ave., Phoenix, AZ 85012 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 7, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–05058 Filed 3–10–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Wednesday, March 29, 2023.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1–888–912–1227 or 214–413–6550.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Wednesday, March 29, 2023, at 2:30 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Conchata Holloway. For more information, please contact Conchata Holloway at 1–888–912–1227 or 214–413–6550, or write TAP Office, 1114 Commerce St., MC 1005, Dallas, TX 75242 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 7, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–05056 Filed 3–10–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer

Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will still be held via teleconference.

DATES: The meeting will be held Tuesday, March 28, 2023.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be held Tuesday, March 28, 2023, at 2:30 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 7, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–05055 Filed 3–10–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will still be held via teleconference.

DATES: The meeting will be held Wednesday, March 29, 2023.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Wednesday, March 29, 2023, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 7, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–05057 Filed 3–10–23; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 88 Monday,

No. 48 March 13, 2023

Part II

Department of Energy

10 Part 429, 430

Energy Conservation Program: Test Procedure for Consumer Boilers; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2019–BT–TP–0037]

RIN 1904–AE83

Energy Conservation Program: Test Procedure for Consumer Boilers

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (''DOE'') amends its test procedure for consumer boilers established under the Energy Policy and Conservation Act. This rulemaking fulfills DOE's obligation to review its test procedures for covered products at least once every seven years. The revisions include: incorporating by reference the latest versions of the industry standards currently referenced in the Federal test procedure; relocating the test procedure to a new appendix separate from the residential furnace test procedure; removing an extraneous definition from its regulatory definitions; and making clarifying corrections to calculations. These revisions will improve the representativeness of the test method and will not be unduly burdensome to conduct.

DATES: The effective date of this rule is April 12, 2023. The amendments will be mandatory for product testing starting September 11, 2023.

The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of April 12, 2023. The incorporation by reference of certain other material listed in the rule was approved by the Director of the Federal Register on March 23, 2009, and February 16, 2016.

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

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2019-BT-TP-0037.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT:

Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6737. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE maintains material previously approved for incorporation by reference in part 430: ANSI/ASHRAE 103–1993 and ASTM D2156–09 (Reapproved 2013). DOE incorporates by reference the following industry standards into 10 CFR part 430:

ANSI/ASHRAE Standard 41.6–2014, ''Standard Method for Humidity Measurement,'' ANSI-approved July 3, 2014 (''ASHRAE 41.6–2014'').

ANSI/ASHRAE 103–2017, ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,'' ANSI-approved July 3, 2017 (''ASHRAE 103–2017'').

Copies ofANSI/ASHRAE 41.6–2014 and ANSI/ASHRAE 103–2017 can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE), 180 Technology Parkway NW, Peachtree Corners, GA 30092, (800) 527–4723 or (404) 636–8400, or online at *www.ashrae.org.*

ASTM International (''ASTM'') Standard D2156–09 (Reapproved 2018), ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels,''approved October 1, 2018 (''ASTM D2156–09 (R2018)'').

Copies of ASTM D2156–09 (R2018) can be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 or online at *www.astm.org.*

International Electrotechnical Commission (''IEC'') 62301, ''Household electrical appliances—Measurement of standby power,'' (Edition 2.0) 2011–01 (''IEC 62301'').

Copies of IEC 62301 can be obtained from the International Electrotechnical Commission (''IEC''), 3 Rue de Varembe, Case Postale 131, 1211 Geneva 20, Switzerland; or online at *webstore.iec.ch.*

See section IV.N of this document for a further discussion of these standards.

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I. Authority and Background

Furnaces, which include consumer boilers, are included in the list of ''covered products'' for which the U.S. Department of Energy (''DOE'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6291(23); 42 U.S.C. 6292(a)(5)) DOE's energy conservation standards and test procedures for consumer boilers are currently prescribed at 10 CFR 430.32(e)(2) and 10 CFR part 430, subpart B, appendix N, *Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers* (''appendix N''), respectively.[1] The following sections discuss DOE's authority to establish test procedures for consumer boilers and relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[2] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA [3] established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include furnaces, which include consumer boilers, the subject of this document. (42 U.S.C. 6292(a)(5))

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

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

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including consumer boilers, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (*Id.*) Any such amendment must consider the most current versions of the International Electrotechnical Commission (''IEC'') Standard 62301 [4] and IEC Standard 62087 [5] as applicable. (42 U.S.C. 6295(gg)(2)(A))

DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

As stated, DOE's existing test procedure for consumer boilers appears at Title 10 of CFR part 430, subpart B, appendix N, *Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers* (''appendix N'') and is used to determine the annual fuel utilization efficiency (''AFUE''), which is the regulatory metric for consumer boilers.

DOE most recently updated its test procedure for consumer boilers in a final rule published in the **Federal Register** on January 15, 2016 (''January 2016 Final Rule''). 81 FR 2628. The January 2016 Final Rule amended the existing DOE test procedure for consumer boilers to improve the consistency and accuracy of test results generated using the DOE test procedure and to reduce test burden. In particular, the modifications relevant to consumer boilers included: (1) clarifying the definition of the electrical power term ''PE''; (2) adopting a smoke stick test for determining whether minimum default

[1] Upon the effective date of this final rule, the test procedure for consumer boilers will be relocated to 10 CFR 430, subpart B, appendix EE.

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

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

[4] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[5] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

draft factors can be applied; (3) allowing for optional measurement of condensate during establishment of steady-state conditions; (4) updating references to the applicable installation and operation (''I&O'') manual and providing clarifications for when the I&O manual does not specify test setup; and (5) revising the AFUE reporting precision. DOE also revised the definitions of several terms in the test procedure and added an enforcement provision to provide a method of test for DOE to determine compliance with the automatic means design requirement mandated by the Energy Independence and Security Act of 2007, Public Law 110–140 (Dec. 19, 2007). 81 FR 2628, 2629–2630.

On May 15, 2020, DOE published in the **Federal Register** a request for information (''May 2020 RFI'') seeking comments on the existing DOE test procedure for consumer boilers, which incorporates by reference ANSI/ASHRAE Standard 103–1993. 85 FR 29352. ANSI/ASHRAE 103–1993 provides test procedures for determining the AFUE of residential central furnaces and boilers. In the May 2020 RFI, DOE requested comments, information, and data about a number of issues, including: (1) the test procedure's scope and definitions; (2) updates to industry standards; (3) ambient test conditions; (4) provisions for testing boilers with manually adjustable combustion airflow; (5) calculation of steady-state heat loss for condensing, modulating boilers; and (6) provisions for testing step modulating boilers. *Id.* at 85 FR 29354–29357. DOE also sought comment generally on whether the current test procedures are reasonably designed to produce results that measure energy efficiency during a representative average use cycle or period of use, whether any potential amendments would make the test procedure unduly burdensome to conduct, whether existing test procedures limit a manufacturer's ability to provide additional features, the impact of any potential amendments on manufacturers including small businesses, whether there are any potential issues related to emerging smart technologies, and generally any other aspect of the test procedure for consumer boilers. *Id.* at 85 FR 23957.

On March 15, 2022, DOE published in the **Federal Register** a notice of proposed rulemaking (''March 2022 NOPR'') proposing to amend the current test procedure to incorporate by reference the most current revision to the applicable industry standard that was available at the time, ANSI/ASHRAE 103–2017, ''Methods of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,'' as well as updating the definitions to reflect the changes in ANSI/ASHRAE 103–2017 as compared to the version of the standard currently incorporated by reference (*i.e.,* ANSI/ASHRAE 103–1993). 87 FR 14624. In addition, the March 2022 NOPR proposed to update appendix N to remove the provisions applicable only to consumer boilers and to rename the appendix ''Uniform Test Method for Measuring the Energy Consumption of Furnaces.'' Correspondingly, DOE proposed to relocate the test procedure specific to consumer boilers at 10 CFR 430 subpart B to a new appendix, EE, ''Uniform Test Method for Measuring the Energy Consumption of Boilers'' (''appendix EE''). *Id.*

On April 7, 2022, DOE held a public meeting via webinar to solicit feedback from stakeholders on the requests for comment in the March 2022 NOPR.

DOE received comments in response to the March 2022 NOPR from the interested parties listed in Table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSION IN RESPONSE TO THE MARCH 2022 NOPR

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
American Gas Association and American Public Gas Association	AGA and APGA	25	Utility Associations.
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	26	Trade Association.
A.O. Smith Corporation	A.O. Smith	24	Manufacturer.
John Busse	Busse	22	Individual.
Bradford White Corporation	BWC	19	Manufacturer.
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison (collectively, the California Investor-Owned Utilities).	CA IOUs	20	Utilities.
Crown Boiler Company	Crown	16	Manufacturer.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, National Consumer Law Center Natural Resources Defense Council, and Northwest Energy Efficiency Alliance.	Joint Advocates	21	Efficiency Organizations.
New York State Energy Research and Development Authority	NYSERDA	23	State Agency.
Rheem Manufacturing Company	Rheem	18	Manufacturer.
U.S. Boiler Company	U.S. Boiler	17	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[6] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the April 7, 2022, public meeting, DOE cites the written comments throughout this final rule. DOE did not identify any oral comments provided during the webinar that are not substantively addressed by written comments.

II. Synopsis of the Final Rule

In this final rule, DOE updates appendix N to remove the provisions applicable only to consumer boilers and to rename the appendix ''Uniform Test Method for Measuring the Energy Consumption of Furnaces.'' Correspondingly, this final rule establishes a new test procedure specific to consumer boilers in a new appendix EE. In appendix EE, DOE includes all provisions currently included in appendix N relevant to consumer boilers, with the following modifications:

(1) Incorporate by reference the current version of the applicable industry standard, ANSI/ASHRAE 103–2017, ''Methods of Testing for Annual Fuel Utilization Efficiency of

[6] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for consumer boilers. (Docket No. EERE–2019–BT–TP–0037, maintained at *www.regulations.gov.*) The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

Residential Central Furnaces and Boilers,'' which includes several updates to the test method.

(2) Incorporate by reference the current version of ASTM Standard D2156–09 (Reapproved 2018), ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels.''

(3) Incorporate by reference ANSI/ASHRAE 41.6–2014, ''Standard Method for Humidity Measurement.''

(4) Update the definitions to reflect the changes in ANSI/ASHRAE 103–2017 as compared to ANSI/ASHRAE 103–1993.

(5) Provide corrections to erroneous calculations and add clarifications to test conditions and setup requirements.

DOE is also removing the definition of ''outdoor furnace or boiler'' from 10 CFR 430.2.

The adopted amendments are summarized in Table II.1 compared to the test procedure provision prior to the amendment, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

DOE test procedure prior to amendment	Amended test procedure	Attribution
Incorporated by reference industry standard ANSI/ASHRAE 103–1993.	Incorporates by reference ANSI/ASHRAE 103–2017 in the new appendix EE.	Harmonization with industry standard update.
Incorporated by reference the procedure for adjusting oil-fired burner by referencing industry standard ASTM D2156–09 (Reapproved 2013).	Incorporates by reference the procedure for adjusting oil-fired burner by referencing industry standard ASTM D2156–09 (Reapproved 2018) in the new appendix EE.	Harmonization with industry standard update.
Limited the maximum relative humidity of the test room during certain tests but did not provide specific instructions for how to measure relative humidity.	Incorporates by reference ANSI/ASHRAE 41.6–2014 instructions for measuring relative humidity of the test room in the new appendix EE.	Referenced by industry standard ANSI/ASHRAE 103–2017, which is being incorporated by reference in this final rule.
Included a definition for ''outdoor furnace or boiler'' at 10 CFR 430.2.	Removes the definition for ''outdoor furnace or boiler'' ..	Unused definition.
Included an undefined term, ''standard cubic foot of gas''	Adds a definition for ''standard cubic foot of gas'' in new appendix EE.	Increase clarity for testing conditions.
Defined ''control'' and ''isolated combustion system'' in appendix N.	Adopts the definitions for the terms ''control'' and ''isolated combustion system'' from ASHRAE 103–2017 in new appendix EE.	Harmonization with industry standard update.
Referenced calculations in ANSI/ASHRAE 103–1993 which yielded a circular reference when calculating the steady-state efficiency for condensing modulating boilers.	Includes an amended calculation for balance-point temperature (T_C) which resolves the circular reference in new appendix EE.	Correction.
Referenced Table 9 in ANSI/ASHRAE 103–1993, which assigned fixed values for the average on-time and off-time per cycle for two-stage and modulating boilers.	References Table 7 of ANSI/ASHRAE 103–2017 in the new appendix EE, which uses calculations for determining the average on-time and off-time per cycle for two-stage and modulating boilers.	Harmonization with industry standard update.
Specified cycle times (t_{ON} and t_{OFF}) to a fraction of a second through reference to ANSI/ASHRAE 103–1993 Table 9.	Provides additional specification in appendix EE to require that calculated cycle timings shall be rounded to the nearest second.	Clarification to reduce test burden.
Calculated oversize factor from a lookup table based on design heating requirement (''DHR'') in ANSI/ASHRAE 103–1993.	Adopts the ANSI/ASHRAE 103–2017 methodology of assigning a constant value of 0.70 to α to represent the national average oversize factor in appendix EE.	Harmonization with industry standard update.
Used a purge time limit of 5 seconds to determine whether heat-up and cool-down tests may be optionally omitted, whereas a purge time limit of 30 seconds was used to determine whether a post-purge (t_P) of 0 seconds could be assigned in calculations.	Applies the 30-second limit in appendix EE for determining when the heat-up and cool-down tests may be optionally omitted.	Harmonization with industry standard update.
Limited the maximum value of post-purge (t_P) to 180 seconds if a purge time of greater than 3 minutes was observed.	Removes the maximum value of 180 seconds in appendix EE and requires an additional temperature measurement to be taken if the post-purge is greater than 3 minutes.	Harmonization with industry standard update.
Referenced calculations for off-cycle infiltration losses in ANSI/ASHRAE 103–1993 which had a typographical error where the conversion from minutes to hours was performed incorrectly.	Specifies the correct calculation for off-cycle infiltration losses through reference to ANSI/ASHRAE 103–2017 and corrects minutes to hours conversion error in new appendix EE.	Correction.
Provided inconsistent unit conversion factor from watts (''W'') to British thermal units per hour (''Btu/h''), using values of 3.412 or 3.413.	Corrects the conversion factor from W to Btu/h to 3.412 throughout new appendix EE.	Correction.
Required the use of a gas having a specific gravity as shown in Table 1 of ANSI/ASHRAE 103–1993.	Requires the use of a gas having a specific gravity ''approximate'' to what is shown in Table 1 of ANSI/ASHRAE 103–2017 in the new appendix EE.	Clarification to reduce test burden.
Referenced incorrect sections of appendix N test procedure regarding average annual auxiliary electrical consumption determination provisions at 10 CFR 430.23(n)(1).	Revises 10 CFR 430.23(n)(1) to update references regarding average annual auxiliary electrical consumption to the correct sections of appendix N and the new appendix EE.	Correction.
Referenced values in ANSI/ASHRAE 103–1993 for determining national average burner operating hours (''BOH''), average annual fuel energy consumption (''EF''), and average annual auxiliary electrical energy consumption (''E_{AE}'').	References values in ANSI/ASHRAE 103–2017 for determining national average BOH, average annual EF, and average annual E_{AE} in the new appendix EE.	Harmonization with industry standard update.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE—Continued

DOE test procedure prior to amendment	Amended test procedure	Attribution
Included instructions for the setup of boilers with draft hoods or draft diverters which specified a minimum R-value for insulation but did not specify the units of measure for R-value.	Includes units of measure for R-value in the new appendix EE.	Correction.

DOE has determined that the amendments described in section III of this document and adopted in this final rule will not substantively impact the measured efficiency of consumer boilers or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. Additionally, DOE has determined that the amendments will not increase the cost of testing. Discussion of DOE's actions is addressed in detail in section III of this document.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule.

III. Discussion

The subsequent sections of this final rule discuss specific topics raised in this rulemaking, including comments DOE received in response to the March 2022 NOPR. These topics include: scope of applicability of the test procedure, definitions in the test procedure, the AFUE metric, updates to industry standards, clarifications and corrections to the current test procedure, and test conditions.

In addition, DOE received comments relating to the general processes by which DOE amends test procedures and energy conservation standards for covered products and equipment.

BWC urged DOE to consider the cumulative regulatory burden placed on manufacturers that produce several different types of regulated products for which there are simultaneous rulemakings. BWC noted that additional burdens on manufacturers include changes to ENERGY STAR specifications; the Securities and Exchange Commission's proposed rule to enhance and standardize climate-related disclosures; updated state and local codes; demand-response requirements for electric water heaters in Western States; lower nitrogen oxides (NO_X) emissions proposals in the State of California; proposed amendments to California Proposition 65; and extended producer responsibility legislation recently enacted in both Maine and Oregon. (BWC, No. 19 at p. 4–5)

In response, DOE notes that cumulative regulatory burden on manufacturers is assessed as part of energy conservation standards rulemakings. The amendments to the consumer boilers test procedure, as promulgated by this final rule, are not expected to add burden to manufacturers because the amendments do not substantially impact efficiency ratings or alter the type of equipment necessary to perform testing. Test costs and burden are discussed in section III.K of this document.

AGA and APGA commented that DOE should implement the recommendations from the recent National Academies of Sciences, Engineering, and Medicine report (''NASEM report'')[7] into all of its appliance rulemakings for test procedures or energy conservation standards. AGA and APGA reiterated recommendations pertaining to analyses that DOE conducts in order to determine whether potential new or amended energy conservation standards are technologically feasible and economically justified. (AGA and APGA, No. 25, p. 3) For example, AGA and APGA highlighted the NASEM report's recommendations that DOE pay greater attention to the justification for its standards, expand the Cost Analysis segment of the Engineering Analysis for its rules, put greater weight on ex post and market-based evidence markups, place greater emphasis on providing an argument for the plausibility and magnitude of any market failure related to the energy efficiency gap, and give greater attention to a broader set of potential market failures on the supply side. *Id.*

Given that this is a test procedure rulemaking for which DOE must meet specific statutory criteria as outlined in 42 U.S.C. 6293(b)(3), the recommendations in the NASEM report which pertain specifically to the processes by which DOE analyzes energy conservation standards are misplaced. DOE will consider this comment in a separate rulemaking considering all product categories.

A. Scope of Applicability

As discussed, in the context of ''covered products,'' EPCA includes boilers in the definition of ''furnace.'' (42 U.S.C. 6291(23)) EPCA defines the term ''furnace'' to mean a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which: (1) is designed to be the principal heating source for the living space of a residence; (2) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu/h; (3) is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and (4) has a heat input rate of less than 300,000 Btu/h for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu/h for forced-air central furnaces, gravity central furnaces, and electric central furnaces. *Id.* DOE has codified this definition in its regulations at 10 CFR 430.2.

DOE defines ''electric boiler'' as an electrically powered furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 pounds per square inch gauge (''psig'') steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 degrees Fahrenheit (°F) water temperature. 10 CFR 430.2.

DOE defines ''low pressure steam or hot water boiler'' as an electric, gas or oil burning furnace designed to supply low pressure steam or hot water for space heating application. 10 CFR 430.2. As with an electric boiler, a low pressure steam boiler operates at or below 15 pounds psig steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 °F water temperature. *Id.*

The scope of the test procedure for consumer boilers is currently specified

[7] Although not specified, DOE interprets this comment to refer to the National Academies of Science, Engineering, and Medicine 2021 report entitled ''Review of Methods Used by the U.S. Department of Energy in Setting Appliance and Equipment Standards.'' Copies of the report are available at *nap.nationalacademies.org/catalog/25992/review-of-methods-used-by-the-us-department-of-energy-in-setting-appliance-and-equipment-standards.*

in section 1 of appendix N, which references section 2 of ANSI/ASHRAE 103–1993. In relevant part, section 2 of ANSI/ASHRAE 103–1993 states that the industry test standard applies to boilers [8] with inputs less than 300,000 Btu/h; having gas, oil, or electric input; and intended for use in residential applications. Further, ANSI/ASHRAE 103–1993 applies to equipment that utilizes single-phase electric current or low-voltage DC current.

DOE is not changing the scope of products covered by its consumer boiler test procedure in this final rule. The following sections discuss specific types of boilers that DOE addressed in the March 2022 NOPR with respect to whether such products are covered by the scope of DOE's test procedure.

1. Combination Space/Water Heating Boilers

Some consumer boilers are capable of providing both space heating and domestic hot water heating, and are often referred to as ''combination'' boilers. In the March 2022 NOPR, DOE responded to comments from the Northwest Energy Efficiency Alliance (''NEEA'') and Rheem recommending that DOE consider developing a separate test procedure for combination space and domestic hot water boilers. 87 FR 14622, 14626–14627. While DOE did not propose a specific definition for combination space and water heating boilers in the NOPR, DOE noted that, to the extent that a combination space and water heating product meets the definition of electric boiler or low pressure steam or hot water boiler, it is subject to the test procedure at appendix N and energy conservation standards for consumer boilers at 10 CFR 430.32(e)(2), and must be tested and rated accordingly. 87 FR 14622, 14625–14626. DOE also stated that it is unaware of any design characteristics of combination space and water heating products that would prevent their testing according to appendix N. *Id.*

DOE did not receive any comments in response to the March 2022 NOPR with regard to combination space and heating water boilers. In this final rule, DOE reiterates its statements presented in the March 2022 NOPR with respect to combination boilers. To the extent that a combination space and water heating product meets the definition of electric boiler or low pressure steam or hot water boiler, it is subject to the test procedure at appendix N (or, as of the effective date of this final rule, appendix EE) and energy conservation standards for consumer boilers at 10 CFR 430.32(e)(2), and must be tested and rated accordingly.

2. Heat Pump Boilers

In the March 2022 NOPR, DOE discussed comments received in response to the May 2021 RFI with regard to hydronic air-to-water and water-to-water heat pumps. DOE tentatively determined that air-to-water and water-to-water heat pumps meet the definitional criteria to be classified as a consumer boiler. 87 FR 14622, 14625. DOE noted that these products utilize only single-phase electric current, are designed to be the principal heating source for the living space of a residence, are not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu/h, meet the definition of an electric boiler,[9] and have a heat input rate of less than 300,000 Btu/h (*i.e.,* the requirement for electric boilers). As such, they meet the criteria of ''furnace'' as defined in 10 CFR 430.2. *Id.* at 87 FR 14625–14626.

In the March 2022 NOPR, DOE also tentatively determined that the test procedure in appendix N does not address such products and would not provide a rated value that is representative of the performance of these products. *Id.* at 14626. In particular, DOE noted that the AFUE metric for electric boilers in ANSI/ASHRAE 103–1993 is calculated as 100 percent minus jacket loss,[10] which provides a representative measure of efficiency for electric boilers using electric resistance technology, for which an efficiency value of 100 percent (the ratio of heat output to energy input) is the maximum upper limit that technically could be achieved. DOE tentatively concluded that the AFUE metric would not provide a representative or meaningful measure of efficiency for a boiler with a heat pump supplying the heat input, because heat pump efficiency (in terms of heat output to energy input) typically exceeds 100 percent, and the AFUE metric does not allow for ratings greater than 100 percent for electric boilers. *Id.*

Based on these considerations, DOE tentatively determined that hydronic air-to-water and water-to-water heat pumps are consumer boilers under EPCA, but that due to the lack of a Federal test procedure, such products are not subject to the current performance standards at 10 CFR 430.32(e). *Id.*

In response to the March 2022 NOPR, Crown and U.S. Boiler [11] stated that hydronic heat pumps should not be classified as boilers under EPCA because hydronic heat pumps cannot deliver water at the same temperatures and heating capacities as traditional boilers. Crown and U.S. Boiler further commented that it is unclear whether hydronic heat pumps are ''designed to be the principal heating source for a living space of a residence'' (a requirement to meet the definition of a furnace at 10 CFR 430.2) because these products are mostly incapable of reaching above 150 °F on a design day, whereas traditional boilers are designed to deliver water at a temperature of 180 °F or higher. Crown and U.S. Boiler also stated that gas, oil, and electric resistance boilers are capable of heating any hot water or steam heating system throughout the entire heating season, whereas hydronic heat pumps do not have such capabilities. Crown and U.S. Boiler stated that heat pumps and boilers provide different consumer utility, and suggested that presenting heat pumps to consumers as ''boilers'' could create confusion with regard to the different capabilities of each. (Crown, No. 16 at p. 1–2; -U.S. Boiler, No. 17 at p. 1–2)

AHRI and AGA and APGA commented that hydronic heat pumps cannot currently provide the same functionality as boilers for high temperature installations as they are unable to provide water at or over 210 °F, and that this lack of utility should disqualify these products from being considered in the boiler test procedure. (AHRI, No. 26 at p. 2; AGA and APGA, No. 25 at p. 2)

BWC disagreed with DOE's tentative determination that air-to-water and water-to-water heat pumps should be defined as consumer boilers. BWC stated that heat pump products and consumer boilers have pronounced differences that should prevent them from being defined as the same product.

[8] ASHRAE 103–1993 defines a boiler as ''a self-contained fuel-burning or electrically heated appliance for supplying low pressure steam or hot water for space heating application.'' This definition covers electric boilers and low pressure steam or hot water boilers as those terms are defined by DOE at 10 CFR 430.2.

[9] ''Electric boiler'' means an electrically powered furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 psig steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 °F water temperature. 10 CFR 430.2.

[10] The term ''jacket loss'' is used by industry to mean the transfer of heat from the outer surface (*i.e.,* jacket) of a boiler to the ambient air surrounding the boiler.

[11] DOE notes that both Crown and U.S. Boiler's comments stated that the companies are subsidiaries of Burnham Holdings, Inc. (''BHI''). The comments submitted by Crown and U.S. Boiler in response to the March 2022 NOPR were identical in content.

BWC noted that boilers and heat pumps [12] are already separate product categories on DOE's website and certified separately through DOE's Compliance Certification Management System. BWC also stated that hydronic heat pumps are rated to Coefficient of Performance (''COP'') rather than AFUE (for boilers), and that the unique technologies utilized by both product types necessitate different methods for testing and rating them. BWC further stated that consumer boilers are designed exclusively to provide a heating utility, whereas hydronic heat pumps can be used to provide both space heating and cooling. (BWC, No. 19 at p. 2–3)

Rheem supported DOE's tentative determination that hydronic air-to-water and water-to-water heat pumps are consumer boilers under EPCA. Rheem stated that although these products may not necessarily be able to achieve the same maximum temperatures as conventional boilers (without electric resistance or gas backup), hydronic heat pump boilers can still provide adequate space heating in many applications. Rheem recommended that DOE either add procedures to test hydronic heat pumps in this consumer boiler test procedure rulemaking or initiate a separate test procedure rulemaking. Rheem asserted that these products perform the same function as other types of boilers and should be tested and rated in a similar manner, and that DOE could use the current AFUE test procedure as a guide to produce an ''AFUE metric'' for hydronic heat pumps that combines the various energy use modes and input rate conditions with test conditions and operating assumptions that are representative of hydronic heat pumps. Rheem stated that any differences in ability to meet consumer heating demands should be considered in the development of energy conservation standards, as opposed to the test procedure. (Rheem, No. 18 at p. 2)

NYSERDA agreed with DOE's tentative determination that air-to-water and water-to-water heat pumps should be considered boilers under EPCA. NYSERDA recommended that DOE develop a test procedure for these heat pumps and combination space heating and water heating products. NYSERDA asserted that the adoption of these test procedures will also enable future standards revisions to adopt more efficient heat pump levels of performance. (NYSERDA, No. 23 at p. 5–6)

[12] DOE understands BWC is referring to central air conditioning and heat pump units.

In consideration of the comments received on this issue, as well as further consideration of the discussion presented in the March 2022 NOPR, DOE has concluded that hydronic air-to-water and water-to-water heat pumps meet the definitional criteria to be classified as a consumer boiler. In particular, as noted initially in the March 2022 NOPR, DOE concludes that these products utilize only single-phase electric current, are designed to be the principal heating source for the living space of a residence, and are not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu/h. In addition, electric heat pump boilers meet the definition of an electric boiler; and gas-fired heat pump boilers meet the definition of a low pressure steam or hot water boiler and have a heat input rate of less than 300,000 Btu/h (*i.e.,* the requirement for electric boilers and low pressure steam or hot water boilers). As such, these products meet the criteria of ''furnace'' as defined in 10 CFR 430.2.

With respect to comments from Crown, U.S. Boiler, AHRI, and AGA and APGA suggesting hydronic air-to-water heat pumps and water-to-water heat pumps should be excluded from the definition because they cannot provide the same maximum water temperature as non-heat pump hydronic systems, DOE notes that neither EPCA nor DOE's definitions at 10 CFR 430.2 provide a minimum water temperature requirement. In addition, in response to comments that hydronic heat pumps serve different applications than boilers, DOE notes that hydronic heat pumps are marketed as providing the principal heating source for a residence, and nothing in EPCA's or DOE's definition would exclude them based on their ability to also provide cooling.

DOE recognizes that hydronic heat pump products differ significantly from non-heat pump boilers, and that the current test procedure for consumer boilers (as well as the amended test procedure established by this final rule) would not provide test results that are representative of the energy use or energy efficiency of an air-to-water or water-to-water heat pump product. Because of these differences and uncertainty regarding the most representative approach to testing these products, DOE is not establishing separate test procedures for hydronic heat pump products in this final rule. Although air-to-water and water-to-water heat pump products meet all the definitional criteria to be considered a consumer boiler, the Department requires more information in order to determine a representative approach for testing these products. Further consideration of an appropriate test procedure for such products would be provided in a separate test procedure rulemaking. Section III.C of this document further discusses the applicability of the AFUE metric to hydronic heat pump products.

B. Definitions

In addition to the overarching definition of ''furnace'' (which includes boilers) and the associated definitions for ''electric boiler'' and ''low pressure steam or hot water boiler'' presented in section III.A of this document, DOE also has defined ''outdoor boilers'' and ''weatherized warm air boilers'' at 10 CFR 430.2 as follows:

- ''Outdoor furnace or boiler'' is a furnace or boiler normally intended for installation out-of-doors or in an unheated space (such as an attic or a crawl space).
- ''Weatherized warm air furnace or boiler'' means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system.

In the March 2022 NOPR, DOE proposed to remove the definition of ''outdoor furnace or boiler'' from its regulations, noting that the definition is not used for the energy conservation standards for boilers at 10 CFR 430.32(e)(2)(iii), nor for applying the test procedure.[13] 87 FR 14622, 14626–14627. DOE sought comment on its proposal to remove the definition of ''outdoor furnace or boiler'' from its regulations and whether removing the definition for ''outdoor furnace or boiler'' would impact the application of the test procedure or energy conservation standards for any such products.

Rheem and BWC supported DOE's proposal to remove the definition of ''outdoor furnace or boiler'' from 10 CFR 430.2. (Rheem, No. 18 at p. 2; BWC, No. 19 at p. 1) A.O. Smith stated that removal of this definition from the DOE regulations would not have a negative impact on the application of the test procedure or energy conservation standards. (A.O. Smith, No. 24 at p. 2) AHRI and AGA and APGA also supported removing the definition and

[13] Specifically, with respect to the test procedure, DOE noted that different jacket loss factors are applied based on whether a boiler is intended to be installed indoors, outdoors, or as an isolated combustion system. The heating seasonal efficiency ($Effy_{HS}$) calculation, which is an element of AFUE, is based on the assumption that all weatherized boilers are located outdoors (see section 10.1 of appendix N). Appendix N does not specify a separate jacket loss assumption for outdoor furnaces or boilers.

stated that the removal would add clarity and consistency to the test procedure. (AHRI, No. 26 at p. 2; AGA and APGA, No. 25 at p. 2)

For the reasons discussed in the March 2022 NOPR, and in consideration of these comments, in this final rule DOE finalizes its proposal to remove the definition of ''outdoor furnace or boiler'' from 10 CFR 430.2.

In the March 2022 NOPR, DOE proposed to incorporate by reference ANSI/ASHRAE 103–2017, including the definitions included therein. 87 FR 14622, 14627. DOE noted that ANSI/ASHRAE 103–2017 includes definitions for ''air intake terminal,'' ''control,'' and ''isolated combustion system'' that are not in ANSI/ASHRAE 103–1993. *Id.* The definitions for ''control'' and ''isolated combustion system'' in ANSI/ASHRAE 103–2017 are almost identical to the definitions for those terms currently defined in sections 2.3 and 2.7 of appendix N, respectively. Therefore, DOE proposed to remove the definitions for ''control'' and ''isolated combustion system'' from DOE's consumer boiler test procedure, as they would be redundant with the definitions incorporated by reference through ANSI/ASHRAE 103–2017, if the proposal to incorporate by reference ANSI/ASHRAE 103–2017 were finalized. *Id.*

Rheem, The CA IOUs, A.O. Smith, AHRI, and AGA and APGA supported incorporating by reference the definitions in ANSI/ASHRAE 103–2017 and removing the separate definitions for ''control'' and ''isolated combustions system'' from DOE's test procedure. (Rheem, No. 18 at p. 3; CA IOUs, No. 20 at p. 1; A.O. Smith, No. 24 at p. 3; AHRI, No. 26 at p. 2; AGA and APGA, No. 25 at p. 2)

For the reasons discussed in the March 2022 NOPR, and in consideration of these comments, DOE is removing the separate definitions for ''control'' and ''isolated combustion system'' from the consumer boiler test procedure, as proposed in the March 2022 NOPR. The definitions for these products are instead provided through DOE's incorporation by reference of ANSI/ASHRAE 103–2017, as discussed further in section III.D.1 of this final rule.

In response to the March 2022 NOPR, Busse suggested that DOE add a definition for ''standard cubic unit of gas'' as follows:

''Standard cubic foot of gas: The amount of gas that would occupy 1 cubic foot when at a temperature of 60 °F, if saturated with water vapor, and under a pressure equivalent to that of 30 inches mercury column.'' (Busse, No. 22 at p. 9)

Busse stated that a definition of standard cubic foot of gas is necessary to comply with the conditions specified in section 7.1 of appendix N, *Fuel Supply.*[14] Busse further stated that the suggested definition would be consistent with industry standards NFPA 54/ANSI Z223.1, *National Fuel Gas Code,* and CSA 4.9/ANSI Z21.13, *Gas-Fired Low Pressure Steam and Hot Water Boilers* and asserted that manufacturers are familiar with this definition when conducting performance testing. Busse noted that the difference between a saturated ''wet'' and unsaturated ''dry'' cubic foot of gas is 1.73 percent at standard temperature and pressure. Busse also recommended that DOE modify the language of section 7.3 of appendix N, *Gas Burner,* to replace ''gas characteristics at a temperature of 60 °F and atmospheric pressure of 30 in of Hg'' with reference to this new definition, *i.e.,* ''gas characteristics to standard cubic foot of gas, as defined in section 2 of this appendix,'' in specifying the conditions needed to correct the burner input rate.[15] (Busse, No. 22 at p. 9–10)

In response, DOE notes that as proposed in the March 2022 NOPR, section 7.3 of appendix EE would require that the burner input rate be corrected to reflect gas characteristics at a temperature of 60 °F and atmospheric pressure of 30 in of Hg when adjusting the burner input rate. Therefore, an additional definition for a standard cubic foot of gas for the purpose of referencing it in sections 7.1 and 7.3 (which is consistent with the language in section 9.1.2.2.1 of both ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017) would be unnecessary; however, it may be useful for clarification.

As such, DOE is adding a definition for a ''standard cubic foot of gas'' to section 2 of appendix EE to specify the temperature and pressure for a standard cubic foot of gas.

C. Metric

As discussed, the energy conservation standards for consumer boilers rely on the AFUE metric. 10 CFR 430.32(e)(2). For gas-fired and oil-fired boilers, AFUE accounts for fossil fuel consumption in active, standby, and off modes, but does not include electrical energy consumption. For electric boilers, AFUE accounts for electrical energy consumption in active mode. EPCA defines the term ''annual fuel utilization efficiency,'' in part, as the efficiency descriptor for furnaces and boilers. (42 U.S.C. 6291(20)) In addition, DOE has established separate metrics and energy conservation standards for power consumption during standby mode and off mode ($P_{W,SB}$ and $P_{W,OFF}$, respectively). 10 CFR 430.32(e)(2)(iii)(B).

AFUE is defined by ASHRAE 103 (both the 1993 and 2017 versions) as the ratio of annual output energy to annual input energy, which includes any non-heating-season pilot input loss but does not include electric energy for gas- or oil-fired furnaces or boilers. For gas- and oil-fired boilers, the AFUE test generally consists of steady-state, cool down, and heat up tests, during which various measurements are taken (*e.g.,* flue gas temperature, concentration of CO_2 in the flue gas). (*See* sections 9.1, 9.5, and 9.6 of both ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017.) For condensing boilers, condensate collection tests during steady-state and cyclic operation are also specified. (*See* sections 9.2 and 9.8 of both ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017.) The test measurements are used in conjunction with certain assumptions to calculate the AFUE. (*See* section 11 of both ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017.)

In the March 2022 NOPR, after tentatively concluding that hydronic heat pumps meet the definitional criteria to be considered a consumer boiler but that the existing test procedure does not apply to them, DOE sought comment on whether any other industry test methods exist for determining the heating efficiency of air-to-water or water-to-water heat pumps. DOE sought comment specifically on AHRI 550/590, and whether it would be appropriate for adoption as a Federal test procedure for such products, and if so, whether modifications could be made to result in an AFUE rating. 87 FR 14622, 14626.

NYSERDA urged DOE to adopt appropriate, industry-recognized test procedures to support informed consumer choice between electric resistance and heat pump products. (NYSERDA, No. 23 at p. 5–6)

BWC stated that it believes DOE has correctly identified the appropriate test procedures for both consumer boilers and hydronic heat pumps at this time, with those procedures being ASHRAE 103–2017 and AHRI 550/590 respectively. (BWC, No. 19 at p 2–3)

[14] Section 7.1 of appendix N requires determining the actual higher heating value in Btu per standard cubic foot for the gas to be used in the test within an error no greater than 1 percent.

[15] Busse also commented that, with respect to the current instruction to ''Correct the burner input rate to reflect gas characteristics,'' technically the Ideal Gas Laws can be applied only to the volume of gas consumed and the higher heating value, and not to the burner input rate.

Rheem identified AHRI 550/590 as an industry test method to determine maximum and part-load COP values but noted this test method would have to be modified to account for standby mode and off mode energy use as well as to produce an AFUE metric. (Rheem, No. 18 at p. 2)

The Joint Advocates stated that while AHRI 550/590 is appropriate for evaluating the performance of consumer air-to-water heat pumps, it is only applicable for water-to-water heat pumps with a capacity greater or equal to 135,000 Btu/h. The Joint Advocates stated that ASHRAE/ANSI/AHRI/ISO Standard 13256–2 is more appropriate for consumer water-to-water heat pumps and referred to international standards EN 14511 and EN 14825 as starting points. The Joint Advocates asserted that a seasonal performance rating analogous to AFUE could be established and encouraged DOE to establish these procedures in a timely manner so that consumers have access to efficiency ratings based on a standardized test procedure. Finally, the Joint Advocates stated that based on 2015 Residential Energy Consumption Survey (''RECS'') data, hydronic systems are the main heating means in 8 percent of U.S. homes overall and the main heating means for 28 percent of households in the Northeastern United States. (Joint Advocates, No. 21 at p. 1–2)

A.O. Smith stated that ISO Standard 13256–2 would be the most appropriate test method for water source heat pump water heaters intended to be used as consumer hot water boilers, and that AHRI Standard 550/590 would be the most appropriate test method for air source heat pump water heaters intended to be used as consumer hot water boilers. Pertaining specifically to AHRI 550/590, A.O. Smith stated that the test procedure to measure COP has fundamental differences than the test procedure to measure AFUE, and that there is no means of deriving an AFUE value from the COP measurement. In addition, A.O. Smith claimed that if the limit for consumer heat pump water ''boilers'' is defined by an input rate of less than 300,000 Btu/h, then the output for these products will include products with heating capacities up to 900,000 Btu/h, which would be outside the scope of a consumer boiler. A.O. Smith recommended that DOE review the referenced performance standards, as they define the heating capacity based on the heat moved into the water being heated, whereas DOE's definition is based on the energy being consumed by the boiler. (A.O. Smith, No. 24 at p. 2)

As stated in section III.A.2 of this document, DOE has concluded that hydronic heat pumps meet the definitional criteria to be covered as a consumer boiler under EPCA's statutory definition at 42 U.S.C. 6291(23) and DOE's regulatory definition at 10 CFR 430.2. However, DOE is not adopting a separate test procedure or metric for hydronic heat pumps in this final rule because the Department requires more information in order to determine a representative approach for testing these products. DOE will continue to consider the appropriate metric to assess the efficiency of such products, and any proposed test procedure would be addressed in a separate test procedure rulemaking in the future.

D. Updates to Industry Standards

The DOE test method for consumer boilers references several industry standards, including ANSI/ASHRAE 103 for various testing requirements pertaining to determination of AFUE, certain sections of IEC 62301 (Second Edition) for determining the electrical standby mode and off mode energy consumption, and ASTM D2156–09 (Reapproved 2013) for adjusting oil burners. The following sections discuss DOE's amendments pertaining to the incorporation by reference of these industry standards.

1. ANSI/ASHRAE 103

As discussed, ANSI/ASHRAE 103–1993 is referenced throughout appendix N for various testing requirements pertaining to determination of the AFUE of consumer boilers. ANSI/ASHRAE 103–1993 provides procedures for determining the AFUE of consumer boilers (and furnaces). As mentioned previously, ANSI/ASHRAE 103–1993 has been updated multiple times. In the rulemaking that culminated in the January 2016 Final Rule, DOE initially proposed to incorporate by reference the most recent version of ANSI/ASHRAE 103 available at the time (*i.e.,* ANSI/ASHRAE 103–2007), but ultimately declined to adopt the proposal in the final rule based on concerns about the impact this change would have on AFUE ratings of products distributed in commerce at that time. 81 FR 2628, 2632–2633 (Jan. 15, 2016). DOE stated that further evaluation was needed to determine the potential impacts of ANSI/ASHRAE 103–2007 on the measured AFUE of boilers. *Id.* DOE theorized that ANSI/ASHRAE 103–2007 might better account for the operation of two-stage and modulating products and stated that DOE may further investigate adopting it or a successor test procedure in the future. *Id.*

After the January 2016 Final Rule, ANSI/ASHRAE 103 was again updated in 2017 (*i.e.,* ANSI/ASHRAE 103–2017). In the May 2020 RFI, DOE identified several substantive differences between ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017 that pertain to consumer boilers and requested further comment on the differences between ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017. 85 FR 29352, 29355.

In the March 2022 NOPR, DOE discussed additional differences between ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017 raised by commenters in response to the May 2020 RFI. 87 FR 14622, 14628–14631. The differences between the two versions of the standard are discussed in detail in sections III.D.1.a through III.D.1.f of this document. After considering the differences between the standards and the potential impact, DOE proposed to incorporate by reference the most recent version (at the time) of ANSI/ASHRAE 103, *i.e.,* ANSI/ASHRAE 103–2017. 87 FR 14622, 14630. DOE tentatively concluded that the improvements included in ANSI/ASHRAE 103–2017 provide a more representative average use cycle for consumer boilers, in particular for two-stage and modulating boilers, and that the change would not materially alter the burden or cost of conducting an AFUE test. *Id.* DOE also noted that test data indicate the update to the 2017 edition of ASHRAE 103 could result in changes to the measured AFUE of two-stage and modulating boilers ranging from –0.50 percent to 0.23 percent, with no discernable trend in the direction or magnitude of change, and that several commenters indicated incorporating ANSI/ASHRAE 103–2017 would likely not impact rated values significantly. 87 FR 14622, 14631. DOE sought further comment on its proposal to incorporate by reference ANSI/ASHRAE 103–2017, the potential impact on ratings and whether retesting would be required. *Id.*

Rheem agreed with DOE's tentative determination that the proposed amendments would result in minimal differences in AFUE ratings but requested that DOE test a representative sample of minimally compliant consumer boilers to determine the effect. Rheem requested that DOE provide this test data in the final rule and assess the impacts on the ongoing energy conservation standards rulemaking. Rheem additionally suggested that DOE could provide an enforcement policy to state that models tested and certified prior to the effective date of the test procedure final rule would be tested to the current appendix N test procedure during an enforcement investigation. (Rheem, No. 18 at p. 3–4)

As discussed, DOE's assessment of the changes in ANSI/ASHRAE 103–2017, along with stakeholder comments provided throughout this rulemaking, indicate that the only update in the industry test procedure with the potential to impact ratings would be the change in cycle times. This topic is discussed in detail in section III.D.2.c of this document. The updated cycle times pertain to condensing boilers, which employ heat exchanger technologies with efficiency performance that surpasses the current minimum AFUE requirements for boilers at 10 CFR 430.32(e)(2)(iii). As discussed in section III.D.2.c of this document, DOE conducted testing to determine that the impact on AFUE ratings of this change would be minimal. Based on this information, DOE has determined that the amendments to the consumer boilers test procedure will not have a significant or substantive impact on ratings, nor affect compliance of any products.

On January 10, 2022, ASHRAE and ANSI approved a 2022 edition of ASHRAE 103 (*i.e.,* ''ANSI/ASHRAE 103–2022''). DOE did not discuss ANSI/ASHRAE 103–2022 in the March 2022 NOPR, and parties commenting in response to the March 2022 NOPR did not indicate that DOE should consider incorporating by reference ANSI/ASHRAE 103–2022. A March 4, 2022, online publication by ANSI states that ANSI/ASHRAE 103–2022 includes mostly editorial changes and quality improvements to test duct and plenum figure, the system number table, and figures for the surface heat transfer coefficient and coefficient of radiation.[16] Given that stakeholders provided general support for adopting ANSI/ASHRAE 103–2017, and that the updates in ANSI/ASHRAE 103–2022 do not substantively change the industry test procedure DOE is not considering ANSI/ASHRAE 103–2022 in this rulemaking.

The following subsections discuss the updates in ANSI/ASHRAE 103–2017 with respect to ANSI/ASHRAE 103–1993.

a. Post-Purge Time

Power vented units, power burner units, and forced-draft units use a combustion blower to exhaust the flue gas during operation. ''Post purge'' is defined in both ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017 as ''the design that permits the continued operation of the combustion blower in a power vented unit, power burner unit, or forced-draft unit for a period of time after the main burner is shut off for the purpose of venting of residential flue gas in the heat exchanger and the venting system.'' For the determination of off-cycle flue losses, it is necessary to demarcate when the boiler has entered its off-cycle after completion of the post-purge period, especially since post-purge periods can last several minutes. Section 8.7 of appendix N specifies the timing of flue temperature measurements during the off-cycle portion of the test method based on the length of the post-purge period. Section 8.7 of appendix N generally corresponds to section 9.5.2.1 of ANSI/ASHRAE 103–1993, except that section 8.7 of appendix N specifies that when the post-purge time is less than or equal to 30 seconds, it can be set to 0 and the cool-down test be conducted as if there is no post-purge; while section 9.5.2.1 of ANSI/ASHRAE 103–1993 specifies that if post-purge time is less than or equal to 5 seconds, it shall be tested as if there is no post-purge. Additionally, the length of the post-purge cycle is used as one criterion for determining whether the heat-up and cool-down tests can optionally be omitted. Section 8.10 of appendix N generally corresponds to section 9.10 of ANSI/ASHRAE 103–1993, and both sections require a post-purge period of less than 5 seconds to optionally omit the heat-up and cool-down tests.

Section 9.5.2.1 of ANSI/ASHRAE 103 was updated in the 2017 version to match DOE's requirement that if the post-purge period is 30 seconds or less, it shall be tested as if there is no post-purge. Additionally, in the March 2022 NOPR, DOE identified the post-purge time threshold being increased to 30 seconds in the criterion for determining whether the ''Optional Test Procedures for Conducting Furnaces and Boilers that have no OFF-Period Flue Loss'' is applicable as a change in ANSI/ASHRAE 103–2017. DOE proposed to adopt the 30-second threshold in the newly proposed appendix EE, consistent with the change to ANSI/ASHRAE 103–2017. 87 FR 14622, 14628.

BWC stated that it appreciated DOE's inclusion of the change in post-purge time length to 30 seconds. (BWC, No. 19, p. 2–3)

Additionally, in the March 2022 NOPR, DOE proposed minor changes to the test method for models with post-purge times longer than 3 minutes, consistent with the updates included in ANSI/ASHRAE 103–2017. 87 FR 14622, 14631. Specifically, section 9.5.2.1 of ANSI/ASHRAE 103–2017 requires that for cases where the post-purge period is greater than 3 minutes, an additional measurement of the flue gas temperature during the cool-down test is required at the midpoint of the post-purge period. DOE proposed to adopt a harmonizing change in the newly proposed appendix EE. 87 FR 14622, 14631 and 14654.

DOE did not receive any comments regarding this proposal. For the reasons discussed in the March 2022 NOPR, DOE is finalizing this amendment to section 8.5(d) of appendix EE.

b. Calculations for Omission of Heat-Up and Cool-Down Tests

The current test procedure for consumer boilers allows certain units to omit the cool-down and heat-up tests. These include units that have been determined to have no measurable airflow through the combustion chamber and heat exchanger during the burner off-period and that have minimal post-purge periods (see section III.D.1.a of this document for discussion of post-purge time). For these boilers, the off-cycle losses are expected to be minimal. However, off-cycle losses (typically determined during the cool-down and heat-up tests) must be accounted for when determining the heating seasonal efficiency, $Effy_{HS}$. Section 8.10 of appendix N currently states, ''In lieu of conducting the cool-down and heat-up tests, the tester may use the losses determined during the steady-state test described in section 9.1 of ASHRAE 103–1993 when calculating heating seasonal efficiency, $Effy_{HS}$.'' Accordingly, sections 10.2 and 10.3 of appendix N provide the appropriate equations to use when calculating $Effy_{HS}$ if the cool-down and heat-up tests are omitted per section 8.10 of appendix N. These equations are provided in sections 10.2 and 10.3 of appendix N because they were not included in ANSI/ASHRAE 103–1993.

As discussed in the March 2022 NOPR, ANSI/ASHRAE 103–2017 makes several updates to include these equations, and the equations in ANSI/ASHRAE 103–2017 are identical to those in appendix N. 87 FR 14622, 14629. Due to this harmonizing update, DOE proposed not to include these equations in the new appendix EE and to instead directly reference the relevant sections in ANSI/ASHRAE 103–2017 (11.3.11.3, 11.5.11.1, and 11.5.11.2). 87 FR 14622, 14631. DOE did not receive comment on this topic and is finalizing this amendment as proposed in the March 2022 NOPR.

[16] Brad Kelechava, ''ANSI/ASHRAE 103–2022: AFUE Testing of Residential Furnaces and Boilers,'' The ANSI Blog, March 4, 2022, *blog.ansi.org/ansi-ashrae-103–2022-fuel-efficiency-afue-testing/#gref.* Last accessed October 5, 2022.

c. Cycle Timings

ANSI/ASHRAE 103–2017 includes calculations, originally included in ANSI/ASHRAE 103–2007, for determining the average on-time and off-time per cycle for two-stage and modulating boilers, rather than assigning fixed values as in ANSI/ASHRAE 103–1993. DOE received comments in response to the May 2020 RFI generally indicating that these updated cycle timings are more representative. DOE referenced test data from the previous rulemaking to ascertain the potential impact of this update and tentatively determined that the new method would be more representative and not unduly burdensome and have minimal impact on AFUE ratings. 87 FR 14622, 14628. Therefore, DOE proposed to adopt the updated cycle times via adoption of the ASHRAE 103–2017 as the reference standard in the newly proposed appendix EE. 87 FR 14622, 14630.

In addition, DOE discussed that data collected for the January 2016 Final Rule [17] for three models of condensing, modulating boilers showed that the changes in on-cycle and off-cycle times resulted in changes in AFUE of 0.11, −0.50, and 0.22 percent, respectively. For two models of non-condensing, modulating boilers, calculating the AFUE based on the on-cycle and off-cycle times in ANSI/ASHRAE 103–2007 changed the AFUE by 0.11 and −0.14 percent, respectively. 87 FR 14622, 14630.

In response to the March 2022 NOPR, BWC stated that it agreed with DOE's conclusion that the new average use cycle calculations from ANSI/ASHRAE 103–2017 are more representative for modulating boilers and have little impact on efficiency ratings. (BWC, No. 19 at p. 4) The CA IOUs stated the ANSI/ASHRAE 103–2017 on/off time per cycle more accurately represents the typical operation for two-stage, modulating, and condensing boiler technologies. (CA IOUs, No. 20 at p. 1)

AHRI requested that DOE provide more data regarding the impacts of cycle timing on condensing models. (AHRI, No. 26 at p. 3)

In response to this request, DOE has conducted testing on two additional modulating condensing boilers to investigate the impact of the revised cycle timings on AFUE. Data collected from this testing is shown in Table III.1. For this investigation, DOE used the updated steady-state efficiency calculation method discussed in section III.E of this final rule for both the ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017 results such that the only variable influencing differences in AFUE ratings would be the cycle timings.

TABLE III.1—IMPACT OF CYCLE TIMINGS ON AFUE FOR MODULATING CONDENSING BOILERS

Model	ANSI/ASHRAE 103–1993		ANSI/ASHRAE 103–2017		Change in AFUE (percent)
	Cycle timings (mm:ss)	AFUE (percent)	Cycle timings (mm:ss)	AFUE (percent)	
Unit No. 1	15:00 on/15:00 off	90.98	23:10 on/11:05 off	91.43	+0.45
Unit No. 2	15:00 on/15:00 off	91.61	20:29 on/11:50 off	91.46	−0.15

As indicated in Table III.1, the change in cycle timings resulted in insignificant changes to the AFUE values (+0.45 percent and −0.15 percent). These additional sample points are consistent with DOE's tentative determination that impacts to AFUE would be minimal as a result of the updated cycle timings in ANSI/ASHRAE 103–2017. Therefore, manufacturers would not be required to retest and rerate consumer boilers due to this change. Based on the discussion provided in the March 2022 NOPR, consideration of comments from interested parties, and this additional test data, DOE has determined that the updated approach in ANSI/ASHRAE 103–2017 increases the representativeness of the test procedure without being unduly burdensome.

During its testing of these two boilers, DOE recognized that the determination of cycle timings in Table 7 of ANSI/ASHRAE 103–2017 does not specify the precision to which these timings (t_{ON} and t_{OFF}) should be calculated (*i.e.,* to the nearest minute or second). ANSI/ASHRAE 103–2017 provides no indication of whether these cycle timings can or should be rounded. Acknowledging that many testing facilities may only be able to time the burner cycling operation of the boiler under test to the nearest second, DOE is providing additional specification in appendix EE to require that calculated cycle timings shall be rounded to the nearest second. This clarification is not expected to impact results significantly but serves to improve repeatability and reproducibility of test results by clarifying the duration of the cycle time.

d. Oversize Factor

The oversize factor for a boiler indicates the ratio between the boiler's nominal capacity and the home's heating load. This factor is represented by the symbol ''α'' and is determined in sections 11.2.8.3 and 11.4.8.3 of ANSI/ASHRAE 103–1993 and sections 11.2.8.2 and 11.4.8.2 of ANSI/ASHRAE 103–2017.

ANSI/ASHRAE 103–2017 updates the method for calculating the oversize factor. While the oversize factor was calculated from a lookup table based on design heating requirement (''DHR'') in ANSI/ASHRAE 103–1993, ANSI/ASHRAE 103–2017 assigns a constant value of 0.70 to α to represent the national average oversize factor. Based on DOE's assessment of its test data, DOE stated in the March 2022 NOPR that this change would be unlikely to have a substantive impact on AFUE ratings because the calculations are not particularly sensitive to changes in the oversize factor value. Specifically, DOE reviewed test data for three modulating, condensing boilers and found that the change in oversize factor from a calculated value, as specified in ANSI/ASHRAE 103–1993, to 0.7 changed the AFUE rating by 0.01 AFUE percentage points or less for all 3 models. 87 FR 14622, 14629. In the March 2022 NOPR, DOE proposed to adopt the constant 0.7 oversize factor through incorporation by reference of ANSI/ASHRAE 103–2017. *Id.*

BWC supported DOE's proposal to adopt the constant 0.7 oversize factor through incorporation of ANSI/ASHRAE 103–2017. BWC's analysis of this proposal demonstrated that adopting this approach would not have a significant impact on overall product efficiency. (BWC, No. 19 at p. 3)

Busse stated that the oversize factor should be a constant value less than 0.4

[17] These data were presented at a public meeting for the March 11, 2015, NOPR pertaining to test procedures for furnaces and boilers and can be found at *www.regulations.gov/document/EERE-2012-BT-TP-0024-0021.*

based on an Air Conditioning Contractors of America (''ACCA'') equipment selection checklist [18] indicating to installers that the selected equipment should be less than or equal to 140 percent of the designed total heating load. Busse commented that in the last 40 years, it has become apparent that oversized equipment is less efficient, such that a more appropriate oversize factor of approximately 0.35 is justified. (Busse, No. 22 at p. 6–7)

In response, DOE notes that commenters did not provide field statistics that would help to determine what a national average representative oversize factor would be, nor is DOE aware of any such data. While contractors may be oversizing boilers to a lesser degree today than in the past, DOE expects that many replacements will be made on a like-for-like basis such that the input capacity of the replacement boiler will match that of the previous boiler (and thus maintain the same oversize factor as the previous boiler). Without sufficient nationally representative data to support deviation from the industry-accepted oversize factor specified in ANSI/ASHRAE 103–2017, DOE is adopting the provision to use a constant oversize factor of 0.70 through incorporation by reference of ANSI/ASHRAE 103–2017. In addition, as discussed previously in this document and initially discussed in the March 2022 NOPR, based on a review of its test data DOE has determined that this change would not substantively impact on AFUE.

e. Annual Performance Metrics

ANSI/ASHRAE 103–2017 changes the method for determining national average burner operating hours (''BOH''), average annual fuel energy consumption (''E_F''), and average annual auxiliary electrical energy consumption (''E_{AE}''),[19] especially for two-stage and modulating products, based on a 2002 study from NIST.

The CA IOUs stated that ASHRAE 103–2017 utilizes differentiating calculations for annual operating hours and reduced fuel input rates that reflect real-world operation conditions of boilers that more accurately represents the typical operation for two-stage, modulating, and condensing boilers that spend a significant amount of time operating at part-load conditions. (CA IOUs, No. 20 at p. 1)

These additional annual performance metrics are not required for representations or certifications to DOE at this time. Federal Trade Commission product labeling requirements at 16 CFR 305.8 specify that determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating must be determined in accordance with the testing and sampling provisions required by DOE as set forth in subpart B of 10 CFR part 430. For boilers, the product labeling provisions are specified at 16 CFR 305.20(f) and currently only require AFUE to be presented. Thus, manufacturers are not required to report BOH, E_F, or E_{AE} for consumer boilers as of this final rule. However, manufacturers may voluntarily represent these values. To ensure that any voluntary representations of these values are conducted in accordance with the DOE test procedure, DOE is adopting the revised calculation methods in ANSI/ASHRAE 103–2017 for BOH, E_F, and E_{AE}.

f. Measurement of Relative Humidity

The current DOE test procedure at appendix N, through incorporation by reference of ANSI/ASHRAE 103–1993, specifies limitations on the relative humidity of the ambient air of the test chamber when testing a condensing boiler. Sections 9.2 and 9.8.1 of ANSI/ASHRAE 103–1993 state, ''The humidity of the room air shall at no time exceed 80 percent'' but do not provide instruction on the instrumentation necessary to measure the relative humidity. ANSI/ASHRAE 103–2017 provides new requirements in section 8.5.1 to follow ANSI/ASHRAE 41.6–2014 in order to measure relative humidity for testing condensing boilers. Because the DOE test method and ANSI/ASHRAE 103–1993 currently limit relative humidity allowed during testing, DOE reasoned in the March 2022 NOPR that relative humidity already must be measured under the current procedure; thus, DOE tentatively concluded that the method prescribed by ANSI/ASHRAE 103–2017 would likely be similar to current practices and requested comment on this topic. 87 FR 14622, 14636–14637.

Busse suggested that DOE should verify that ANSI/ASHRAE 41.6–2014 includes precision and calibration requirements. (Busse, No. 22 at p. 9–10) DOE has reviewed ANSI/ASHRAE 41.6–2014 in detail and notes that it provides setup and calibration methods for both psychrometers and hygrometers (two types of instruments which can be used to measure relative humidity). Section 6 of ANSI/ASHRAE 41.6–2014 provides calibration requirements, and sections 7 and 8 of ANSI/ASHRAE 41.6–2014 provide measurement methods, precision requirements, and measurement uncertainty analysis.

As discussed further in section III.K of this document, DOE received comments indicating that introducing these new requirements for measurement and instrumentation would not be unduly burdensome to industry. In this final rule, DOE is incorporating by reference ANSI/ASHRAE 41.6–2014 in appendix EE for the purpose of performing the required humidity measurement.

2. IEC 62301 and ASTM D2156–09

DOE noted in the May 2020 RFI that the version of IEC 62301 currently incorporated by reference in appendix N is still the most recent version, and the most recent iteration of ASTM D2156–09 is a version reapproved in 2018 that did not contain any changes from the 2009 version. 85 FR 29352, 29355. DOE did not receive any comments pertaining to its incorporation by reference of IEC 62301 or ASTM D2156–09 and in the March 2022 NOPR proposed to maintain the current reference to IEC 62301, and to update the reference to ASTM D2156–09 to reflect the version that was reapproved in 2018. 87 FR 14622, 14628. DOE did not receive any comments related to its incorporation by reference of these standards. In this final rule, DOE is finalizing their adoption for appendix EE as proposed.

E. Steady-State Efficiency for Condensing Modulating Boilers

In the May 2020 RFI and the March 2022 NOPR, DOE discussed that ANSI/ASHRAE 103–1993 and ANSI/ASHRAE 103–2017 yield a circular reference when calculating the steady-state efficiency for condensing modulating boilers. 85 FR 29352, 29357; 87 FR 14622, 14629.

As discussed in the March 2022 NOPR, the circular reference arises within the calculation of steady-state efficiencies at maximum and minimum input rate, which depends in part on the steady-state heat loss due to condensate going down the drain at the maximum and reduced input rates. (*See* section 11.5.7.3 of ANSI/ASHRAE 103–2017, which refers to section 11.3.7.3.) The steady-state heat loss due to condensate going down the drain at the maximum and minimum input rates is calculated in part based on the national average outdoor air temperature at the maximum and minimum input rates.

[18] ACCA ''Verifying ACCA Manual S® Procedures'' brochure, *www.acca.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=2f0a6828-2205-e112-745f-7215c9a85541&forceDialog=0.* Last accessed October 7, 2022.

[19] A typographical correction to the determination of E_{AE} at 10 CFR 430.23(n) is discussed in section III.F.5 of this final rule.

(*See* section 11.5.7.2 of ANSI/ASHRAE 103–2017, which refers to section 11.3.7.2.) The national average outdoor air temperatures at the maximum and minimum input rates are both a function of the balance point temperature. (*See* section 11.5.8.3 of ANSI/ASHRAE 103–2017, which refers to section 11.4.8.3.) The balance point temperature is calculated based on the oversize factor at maximum input rate (which is, as discussed previously, a constant value in ANSI/ASHRAE 103–2017) and the ratio of the heating capacity at the minimum input rate to the heating capacity at the maximum input rate. (*See* section 11.5.8.4 of ANSI/ASHRAE 103–2017, which references section 11.4.8.4.) The heating capacities at the minimum and maximum input rates are calculated based in part on the steady-state efficiencies at minimum and maximum input rates, respectively. (*See* section 11.5.8.1 of ANSI/ASHRAE 103–2017, which references section 11.4.8.1.) If the calculations were interpreted to refer back to the steady-state efficiencies at minimum and maximum input rates for a modulating, condensing model, as determined by section 11.5.7.2 of ANSI/ASHRAE 103–2017, a circular reference would result.

However, since there is no specific instruction to use the values as calculated by section 11.5.7.2, DOE stated in the March 2022 NOPR that it interprets ANSI/ASHRAE 103–2017 to instruct that the steady-state efficiency at maximum and reduced input rates be determined as specified in section 11.4.8.1, which refers to section 11.4.7, which in turn refers to section 11.2.7 for the calculation of steady-state efficiency for non-condensing, non-modulating boilers. 87 FR 14622, 14629. The steady-state efficiencies at maximum and minimum input calculated using section 11.2.7 can then be used to obtain values for output capacities at the maximum and reduced input, which are needed to calculate the balance point temperature, the average outdoor air temperature at maximum and minimum input, and finally the heat loss due to condensate going down the drain at maximum and minimum input rates. *Id.*

In the March 2022 NOPR, DOE proposed to add provisions to clarify the approach for calculating steady-state efficiencies at maximum and minimum input rates for condensing, modulating boilers using ANSI/ASHRAE 103–2017. 87 FR 14622, 14629. Specifically, DOE proposed to codify provisions in section 10.1.2 of appendix EE to explain how to calculate these values without a circular reference, ultimately by referring back to section 11.2.7 of ANSI/ASHRAE 103–2017. 87 FR 14622, 14655.

Crown, U.S. Boiler, BWC, Rheem, A.O. Smith, AHRI, and AGA & APGA all supported DOE's proposal to provide additional specification that would avoid a circular reference in the test procedure. (A.O. Smith, No. 24 at p. 3; AGA & APGA, No. 25 at p. 2) Rheem recommended that each subsection in section 10.1.2 of appendix EE should not say ''previous step'' but should refer to the appropriate subsection. Specifically, Rheem recommended that DOE present an equation for balance point temperature, T_C, in which the variables used in the equation reference the relevant sections in ANSI/ASHRAE 103–2017. (Rheem, No. 18 at p. 3) Crown, U.S. Boiler, BWC, and AHRI all recommended the same revision for section 10.1.2 to improve the clarity of the section. (Crown, No. 16 at p. 3; U.S. Boiler, No. 17 at p. 2–3; BWC, No. 19 at p. 3; AHRI, No. 26 at p. 2–3) Specifically, the commenters recommended revising section 10.1.2 to replace the output capacity parameters $Q_{OUT,R}$ and Q_{OUT} as follows:

10.1.2 Calculate the balance point temperature (T_C) for condensing, modulating boilers by using the following equation in place of that referenced by 11.5.8.4 [of ANSI/ASHRAE 103–2017]:

$$T_C = T_{SH} - \left[\left(T_{SH} - T_{OA,T}\right)(1+\alpha)\left(\frac{Q_{IN,R}\left(100 - L_{L,A} - L_{S,SSR}\right)}{Q_{IN}\left(100 - L_{L,A} - L_{S,SS}\right)}\right)\right]$$

Where:

T_{SH} = typical average outdoor temperature at which a boiler starts operating, 65 °F

$T_{OA,T}$ = the typical outdoor design temperature, 5 °F

α = oversize factor, as defined in 11.4.8.2 [of ANSI/ASHRAE 103–2017]

Q_{IN} = steady-state nameplate maximum fuel input rate

$Q_{IN,R}$ = steady-state reduced input fuel input rate

$L_{S,SSR}$ = average sensible heat loss at steady state, reduced input operation

$L_{S,SS}$ = average sensible heat loss at steady state, maximum input operation

In reviewing this equation, DOE agrees that the recommended equation adequately resolves the circular reference issue in the same manner as DOE proposed in the March 2022 NOPR, but with a simplified approach to specifying the correct calculations for determining the steady-state efficiency for condensing modulating boilers. Rather than determining Q_{OUT} and $Q_{OUT,R}$ based on the steady-state efficiencies $Effy_{SS}$ and $Effy_{SS,R}$ (using section 11.2.7 of ANSI/ASHRAE 103–2017) to calculate T_C, the suggested equation simply inserts the appropriate variables directly into the equation for T_C, providing the same result. DOE is therefore adopting this revised equation in section 10.1.3 of appendix EE.

F. Corrections and Clarifications

1. Off-Cycle Losses

In response to the March 2022 NOPR, several commenters indicated that ANSI/ASHRAE 103–2017 has a typographical error in the equations used to determine $L_{I,OFF1}$ and $L_{S,OFF1}$ (off-cycle infiltration and sensible losses, respectively). Specifically, Crown and U.S. Boiler stated there is an error in section 11.2.10.8 of ANSI/ASHRAE 103–2017 for the calculation of $L_{I,OFF1}$. Crown and U.S. Boiler stated that the equation for $L_{I,OFF1}$ in ANSI/ASHRAE 103–1993 was erroneous because Q_{IN} was multiplied by 60 when it should have been divided by 60. According to Crown and U.S. Boiler, ASHRAE attempted to correct this error in ANSI/ASHRAE 103–2007, but inadvertently copied the equation for $L_{S,OFF1}$ to $L_{I,OFF1}$ for units having post-purge times below 3 minutes, and this error was not corrected in the 2017 edition. (Crown, No. 16 at p. 3; U.S. Boiler, No. 17 at p. 3) Similarly, Rheem identified this issue involving the factor of 60 in the equations for $L_{S,OFF1}$ and $L_{I,OFF1}$ and asked DOE to evaluate the impact on ratings. (Rheem, No. 18, p. 6)

DOE has examined the equations for $L_{S,OFF1}$ and $L_{I,OFF1}$ in ANSI/ASHRAE 103–2017 and understands that the factor of 60 is used to convert the cycle times (reported in minutes) into hours because the input rate is expressed in terms of Btu/h. Thus, the cycle times must be divided by 60 to convert these values into hours. Section 11.2.10.6 of ANSI/ASHRAE 103–2017 performs this operation correctly for determining $L_{S,OFF1}$, but the factor of 60 is used incorrectly in sections 11.2.10.6 and 11.2.10.8 of ANSI/ASHRAE 103–1993.

As Crown and U.S. Boiler indicated, industry has been aware of this error

since the development of ANSI/ASHRAE 103–2007. As such, DOE expects that current ratings are determined based on the corrected use of the factor of 60. In particular, DOE is aware that the Gas Appliance Manufacturers Association (GAMA) [20] developed a computer program to calculate AFUE.[21] DOE has reviewed a version of this program (dated October 15, 2003) and determined this calculation was corrected in the underlying code. Based on this finding, correcting the use of the factor of 60 (by incorporating by reference ANSI/ASHRAE 103–2017) should not affect the ratings of products which have already been tested and certified. Furthermore, these calculations apply only to consumer boilers that have system numbers 2, 3, or 4 with post-purge times greater than 30 seconds, which DOE understands to be a relatively low fraction of the market based on its own compliance testing.

DOE notes that section 11.2.10.8 of ANSI/ASHRAE 103–1993 provided the correct equation for $L_{I,OFF1}$ for models with post-purge periods that are less than or equal to 3 minutes (albeit with the aforementioned error with the factor of 60).

The equation for $L_{I,OFF1}$ for models with post-purge periods that are greater than to 3 minutes is corrected in ANSI/ASHRAE 103–2017 and is adopted in this final rule through incorporation by reference.

2. Conversion Factor for British Thermal Units

In the March 2022 NOPR, DOE noted inconsistencies in the conversion factors from watts (W) or kilowatts (kW) to British thermal units per hour (Btu/h), in which some sections used a conversion factor of 3.412 and other sections use 3.413. 87 FR 14622, 14634. DOE stated that the conversion factor between watts and Btu/h is generally accepted to be 1 watt = 3.412142 Btu/h (or 1 Btu/h = 0.2930711 watts), as published in the *2021 ASHRAE Handbook—Fundamentals.*[22] *Id.* This value is more appropriately rounded to 3.412 W/(Btu/h); therefore, DOE proposed correcting the test procedures to use 3.412 W/(Btu/h) in all calculations where 3.413 W/(Btu/h) was previously used. *Id.* DOE stated in the March 2022 NOPR that it did not expect this correction to affect AFUE ratings. *Id.*

DOE did not receive comments on this topic. For the reasons discussed here and in the March 2022 NOPR, this final rule implements a conversion factor of 3.412 in each instance within new appendix EE. DOE also amends appendix N—which will remain applicable to consumer furnaces other than boilers—to use the corrected conversion factor.

3. Oil Pressure Instrumentation Error

Section 6.3 of ANSI/ASHRAE 103–2017 states, ''Instruments for measuring gas, oil, air, water, and steam pressure shall be calibrated so that the error is no greater than the following.'' However, the specifications that follow omit the instrumentation requirements applicable to measuring oil pressure. Section 6.3(b) of ANSI/ASHRAE 103–1993 included the oil pressure specification.

In response to the March 2022 NOPR, Rheem commented that DOE should add the oil pressure instrumentation specification from ANSI/ASHRAE 103–1993 to section 5 of the new appendix EE test procedure. (Rheem, No. 18 at p. 6)

This final rule reinstates the omitted provisions from section 6.3 of ANSI/ASHRAE 103–1993 in section 5 of appendix EE.

4. Gas Inlet Conditions

Section 7.1 of appendix N references Table 1 of ANSI/ASHRAE 103–1993 for maintaining the gas supply, ahead of all controls for a furnace,[23] at an acceptable test pressure. The natural gas inlet pressure shall be between the ''normal'' and ''increased'' values shown in Table 1 of ANSI/ASHRAE 103–1993. Table 1 in ANSI/ASHRAE 103–2017 provides identical gas inlet pressures to those in ANSI/ASHRAE 103–1993 (this table is presented in section 8.2.1.3 of ASHRAE 103–2017, which is excluded from reference in the current appendix N test procedure). Table 1 also specifies the specific gravity of the test gases. The pressures and specific gravity of the test gases are reproduced in Table III.2 of this document.

TABLE III.2—NATURAL GAS INLET PRESSURES AND SPECIFIC GRAVITY OF TEST GASES IN TABLE 1 OF ANSI/ASHRAE 103–1993 AND ANSI/ASHRAE 103–2017

Type	Test pressure (inches water column)		Specific gravity (air = 1.0)
	Normal	Increased	
Natural	7.0	10.50	.65
Manufactured	3.5	5.25	.38
Butane	11.0	13.00	2.00
Propane	11.0	13.00	1.53

In response to the March 2022 NOPR, Crown and U.S. Boiler stated that the gas inlet pressure requirements in section 8.2.1.3 of ANSI/ASHRAE 103–2017 are appropriate and necessary for units with pilot lights because most pilots have no pressure regulation within the appliance itself, and thus the input rate of the pilot is determined in large part by the inlet pressure. Crown and U.S. Boiler noted, however, that since continuous standing pilots are prohibited by EPCA on consumer boilers, such restrictive requirements on the gas inlet pressure are no longer necessary in the Federal test procedure and may place undue burden on test labs. Crown and U.S. Boiler commented that maintaining a 7.0 inches water column (''in. w.c.'') minimum inlet pressure is not always possible in some test labs, nor is it necessary as long as the regulator outlet pressure can be maintained, and the nameplate input

[20] GAMA and the Air-Conditioning and Refrigeration Institute (ARI) merged in 2008 to form AHRI.

[21] In the May 2020 RFI, DOE discussed the industry-developed computer program that calculates AFUE based on ANSI/ASHRAE 103–1993 ''AFUE v1.2.'' This software was most recently updated in April 2004. 85 FR 29352, 29356.

[22] *2021 ASHRAE Handbook—Fundamentals (I–P Edition).* Peachtree Corners, GA: American Society of Heating, Refrigeration and Air-Conditioning Engineers, 2021. Available at *www.ashrae.org/technical-resources/ashrae-handbook/description-2021-ashrae-handbook-fundamentals.*

[23] This term refers to the broader definition of ''furnace,'' which includes warm air furnaces and boilers.

achieved. Crown and U.S. Boiler further indicated that expensive gas booster equipment may be necessary to meet the 7.0 in. w.c. minimum. Crown and U.S. Boiler stated that gas appliances are generally listed for use up to 14.0 in. w.c. inlet pressure, so there is also no reason to reduce this pressure to 10.5 in. w.c. on a boiler without a continuous pilot in order to provide results that are repeatable and representative of what can be expected in the field. In order to afford labs greater flexibility while still preventing boilers from being tested at gas inlet pressures for which they are not intended to be used in the field, Crown and U.S. Boiler suggested replacing the second sentence of section 8.2.1.3 of ANSI/ASHRAE 103–2017 with: ''The gas supply, ahead of all controls for a furnace, shall be maintained at a test pressure within the upper and lower limits shown in the manufacturer's instructions or on the boiler itself. In the absence of any such limits, the gas supply pressure shall be maintained between the normal and increased values shown in Table 1 of ANSI/ASHRAE 103–2017.'' (Crown, No. 16 at p. 2–3; U.S. Boiler, No. 17 at p. 2)

Busse urged DOE to modify the language in section 7.1 of appendix EE to include the term ''approximately'' when referring to meeting the specific gravity requirements in Table 1 of ANSI/ASHRAE 103–2017, asserting that the omission of this term suggests that DOE expects the specific gravity to be exactly as shown in Table 1 without providing instrument requirements for measuring. (Busse, No. 22 at p. 10)

At 42 U.S.C. 6295(f)(3)(A), EPCA mandates that gas-fired boilers manufactured on or after September 1, 2012, must not have a constant burning pilot. DOE agrees that the test procedure requirements in appendix N (which reference Table 1 of ANSI/ASHRAE 103–1993) have a greater contribution to maintaining the reproducibility and repeatability of test results for consumer boilers with constant burning pilots; however, it is currently unclear to DOE what the impacts of updating the natural gas inlet pressure requirements as suggested would be on measured efficiency ratings for boilers without constant burning pilots. Crown and U.S. Boiler did not provide data to indicate that their suggested approach of relying on the manufacturer's instructions for setting natural gas inlet pressure will not significantly impact ratings. Manufacturers have not previously expressed concern regarding the ability to meet the inlet pressure requirements in appendix N, and no waivers have been received for consumer boilers that are not compatible with the inlet pressure provisions. This suggests that manufacturers and test laboratories have been able to meet these setup requirements since compliance with the currently applicable appendix N test procedure has been required (July 13, 2016).

For these reasons, DOE has determined that no correction to the natural gas inlet pressure requirements is necessary at this time and is adopting the reference to Table 1 of ANSI/ASHRAE 103–2017 in section 7.1 of appendix EE as proposed in the March 2022 NOPR. Regarding Busse's suggestion to include the word ''approximately'' in reference to the specific gravity values referenced in section 7.1, DOE agrees that the specific gravity may not be exactly as provided in Table 1 of ANSI/ASHRAE 103–2017 because variations exist due to differences in gas composition in supply sources. DOE understands that the purpose of specifying the gas characteristics in Table 1 of ANSI/ASHRAE 103–2017 is to ensure that the energy content in the gas is consistent for the repeatability and reproducibility of the test. DOE notes that explicit tolerances are provided for the higher heating value of the gas used, such that providing explicit tolerances for the specific gravity of the gas would be redundant. As such, DOE is adopting Busse's suggestion to state that the specific gravity of the gas should be ''approximately'' that shown in Table 1 of ANSI/ASHRAE 103–2017.

5. Active Mode Electrical Energy Consumption

As previously discussed, AFUE does not include active mode electrical consumption for gas-fired and oil-fired boilers. Instead, the DOE test procedure includes provisions for determining the average annual auxiliary electrical energy consumption for gas-fired and oil-fired boilers (E_{AE}), as a separate metric from AFUE, that accounts for active mode, standby mode, and off mode electrical consumption. (See appendix N, section 10.4.3.) E_{AE} is referenced by the calculations at 10 CFR 430.23(n)(1) for determining the estimated annual operating cost for furnaces. However, the provisions at 10 CFR 430.23(n) include several incorrect references to sections in appendix N. In the March 2022 NOPR, DOE proposed to correct 10 CFR 430.23(n)(1) to reference the appropriate sections of appendix N where the currently codified provisions point to the wrong sections. Additionally, DOE proposed to revise 10 CFR 430.23(n)(1) such that sections in appendix N are referenced for furnaces and sections in appendix EE are referenced for boilers. 87 FR 14622, 14633, and 14643.

DOE did not receive any comments on this topic. In this final rule, DOE adopts these corrections as proposed.

6. Circulator Pumps

Section 8.2 of the proposed appendix EE from the March 2022 NOPR included instructions on the electrical energy consumption measurements for various boiler components in order to calculate PE, the electrical power involved in burner operation. 87 FR 14622, 14654. It stated that the measurement of PE must include the boiler pump if so equipped. *Id.*

In response to the March 2022 NOPR, Rheem noted that section 2 of the proposed appendix EE defines a ''boiler pump'' [24] as being separate from the circulating water pump; however, the term ''circulating water pump'' is not defined in the proposed appendix EE or ANSI/ASHRAE 103–2017. Rheem recommended that DOE add a definition for ''circulating water pump'' to clarify the difference between these pumps and to reduce confusion when performing the procedure in section 8.2 of appendix EE, which refers to both pump types. (Rheem, No. 18 at p. 5–6)

DOE notes that the definition for ''boiler pump'' was established in the January 2016 Test Procedure Final Rule. 81 FR 2628, 2647. In the January 2016 Test Procedure Final Rule, in describing devices that use power during the active mode, DOE discussed a secondary pump for boilers (*i.e.,* boiler pump) used to maintain a minimum flow rate through the boiler heat exchanger, which is most typically associated with condensing boiler designs. *Id.* at 81 FR 2633. In the preamble to the January 2016 Test Procedure Final Rule, DOE stated that it would define a boiler pump as, ''a pump installed on a boiler that maintains adequate water flow through the boiler heat exchanger and that is separate from the circulating water pump;'' however, this definition was not codified with the additional clarification that the boiler pump maintains adequate water flow through the heat exchanger. *Id.* at 81 FR 2634. In order to improve the clarity of the boiler pump definition, DOE is revising this definition to reflect the language which was inadvertently omitted from the January 2016 Test Procedure Final Rule.

Additionally, section 9.1.2.2 of ANSI/ASHRAE 103–2017 states that, for hot water boilers, the circulating water

[24] Section 2.2 of appendix N defines a ''boiler pump'' as a pump installed on a boiler that is separate from the circulating water pump.

pump nameplate power is to be used to determine the electrical power to the circulating water pump (BE), and if the pump nameplate power is not available, use the pump power listed in the water pump manufacturer's literature or use 0.13 kW. In response to the March 2022 NOPR, Busse suggested that, because circulator pumps do not have a ''nameplate'' power value, the water pump manufacturer's literature could be used instead for calculating the value of BE. Busse also commented that the default value of 0.13 kW in ANSI/ASHRAE 103–2017 may not be appropriate for modern electronically commutated motor-based circulator pumps. (Busse, No. 22 at p. 11)

At this time, DOE does not have sufficient data on circulating water pumps used with consumer hot water boilers to specify a more representative power draw to be used in lieu of manufacturer-reported information (either on a nameplate or in the I&O manual). As ANSI/ASHRAE 103–2017 is currently the industry-accepted test standard [25] for consumer boilers, DOE expects that the provisions for circulator pump power remain representative for current installations. Additionally, DOE notes that the value of BE is not a factor that determines AFUE (see section III.C for discussion about the AFUE metric).

7. Units With Draft Hoods or Draft Diverters

Section 6.4 of appendix N provides installation instructions for units with draft hoods or draft diverters. Among other requirements, this section specifies installing the stack damper in accordance with the ''I&O manual.''

In response to the March 2022 NOPR, Rheem commented that section 6.4 of appendix N appeared to have been omitted from the proposed appendix EE. Rheem noted that these provisions are still relevant to boilers and should be carried over into the new appendix EE test procedure. (Rheem, No. 18 at p. 6)

The March 2022 NOPR proposed in section 6 (''Apparatus'') of appendix EE to reference section 7 of ANSI/ASHRAE 103–2017 (''Apparatus'') including sections 7.2.3.1 and 7.3.3.1. Section 7.3.3.1 of ANSI/ASHRAE 103–2017 specifies stack and flue installation requirements for boilers with draft hoods or draft diverters by referencing section 7.2.3.1 of ANSI/ASHRAE 103–2017. The language in section 7.2.3.1 of ANSI/ASHRAE 103–2017 is identical to the provisions in section 6.4 of the current appendix N, except that section 7.2.3.1 specifies that the stack damper be installed in accordance with the ''manufacturer's instructions'' rather than the ''I&O manual'' specified in section 6.4. DOE's proposal to reference sections 7.2.3.1 and 7.3.3.1 of ANSI/ASHRAE 103–2017 through reference to section 7 in the new appendix EE test procedure maintained the installation instructions for units with draft hoods or draft diverters in appendix EE. This final rule maintains the reference to section 7 of ANSI/ASHRAE 103–2017 in section 6 of appendix EE.

DOE has determined, however, that maintaining the more specific reference to the manufacturer's I&O manual, rather than a general reference to manufacturer's instructions, will ensure the reproducibility of the test procedure by providing a more specific reference to the document that must be consulted with regard to installing the stack damper. Therefore, this final rule adds an exception in section 6 of appendix EE to specify referencing the I&O manual in lieu of manufacturer's instructions in section 7.2.3.1 of ANSI/ASHRAE 103–2017.

8. Rounding of AFUE

In response to the March 2022 NOPR, Busse observed an inconsistency between requirements to round the AFUE at 10 CFR 430.23(n)(2)(iii) and requirements to truncate the AFUE at 10 CFR 429.18(a)(2)(vii). (Busse, No. 22 at p. 11)

On July 22, 2022, DOE published a final rule regarding certification requirements for several covered products and equipment, including consumer boilers (''July 2022 Certification Final Rule''). 87 FR 43952. In an amendment established by that final rule, effective August 22, 2022, DOE modified 10 CFR 429.18(a)(2)(vii) to state that AFUE must be rounded to the nearest one-tenth of a percentage point. *Id.* at 87 FR 43968. As this amendment provides consistency between the certification requirement and the test procedure, no further correction is required in this rulemaking.

G. Other Test Procedure Topics

In the course of this rulemaking, DOE solicited feedback on additional aspects of the current test procedure for consumer boilers to assess whether they remain representative of the energy consumption during an average use cycle. DOE did not propose to amend the test procedure for consumer boilers with regard to these topics in the March 2022 NOPR, and after consideration of comments received in response to that NOPR, DOE determined not to amend the test procedure accordingly. Comments received with regard to these topics are discussed in the following subsections.

1. Outdoor Design Temperature

ANSI/ASHRAE 103–2017 assigns a value of 5 °F for the typical outdoor design temperature and 42 °F for the average outdoor air temperature, represented by $T_{OA,T}$ and T_{OA}, respectively. The outdoor design temperature is the lowest expected temperature at which the boiler can satisfy the home's heating demand, while the average outdoor air temperature is the average temperature during the heating season.

In response to the March 2022 NOPR, Busse stated that the 5 °F outdoor design temperature used in ANSI/ASHRAE 103–1993 [26] may be out of date due to climate change and suggested that different outdoor design temperatures could be assigned for furnaces and boilers. (Busse, No. 22 at p. 4) Similarly, Busse indicated that a 42 °F average outdoor air temperature may no longer be valid based on recent climate change data. (Busse, No. 22 at p. 11)

In response, DOE notes that homes in the United States—particularly in the Northeast region, where most boilers are installed—still experience temperatures as low as 5 °F during the heating season [27] despite climate change trends. DOE does not have any data, nor did Busse or other commenters provide any such data, suggesting a value other than 5 °F that would provide more representative test results. As such, DOE is maintaining 5 °F as the outdoor design temperature in the appendix EE test procedure for consumer boilers.

Regarding the average outdoor air temperature, DOE examined average outdoor air temperatures for the contiguous United States during the months of October, November, December, January, February, and March (*i.e.,* the months during which consumer boilers would be expected to operate).[28] This data indicates that from

[25] ANSI/ASHRAE 103–2022 does not provide substantive updates to provisions for circulator pump power.

[26] DOE notes that the same requirement is also specified in ANSI/ASHRAE 103–2017.

[27] For example, daily temperature data for the Albany, NY, area for the winter of 2022 (December 1, 2021, through March 1, 2022) shows 13 days during which the observed temperature reached at or below 5 °F. The Duluth, MN, area experienced 55 days during which the observed temperature reached at or below 5 °F during the same time period. Data for these areas are available at *www.weather.gov/wrh/Climate?wfo=aly* and *www.weather.gov/wrh/Climate?wfo=dlh.* Last accessed October 7, 2022.

[28] These temperatures are published by the National Oceanic and Atmospheric Administration and are available at *www.ncei.noaa.gov/access/*

Continued

2012 through 2022, average outdoor air temperatures during these months is 41 °F, which aligns closely with the value of 42 °F specified in ANSI/ASHRAE 103–2017. Therefore, in this final rule, DOE is maintaining the value of 42 °F for T_{OA} as specified by ANSI/ASHRAE 103–2017.

2. Ambient Conditions

The current test procedure for consumer boilers in appendix N, through incorporation by reference of ANSI/ASHRAE 103–1993, specifies that the ambient air temperature during testing must be between 65 °F and 100 °F for non-condensing boilers, and between 65 °F and 85 °F for condensing boilers (see section 7 of appendix N and section 8.5.2 of ANSI/ASHRAE 103–1993). In addition, the relative humidity cannot exceed 80 percent during condensate measurement (see section 8 of appendix N and section 9.2 of ANSI/ASHRAE 103–1993).

In the May 2020 RFI, DOE requested comment and data on the effects of ambient temperature and relative humidity on AFUE results, whether the current ranges of allowable conditions adversely impact the representativeness of AFUE values or repeatability of AFUE testing, and whether a narrower range of allowable ambient conditions would increase testing burden. 85 FR 29352, 29356.

As discussed in the March 2022 NOPR, DOE received comments from AHRI and manufacturers supporting the current range of allowable operating conditions, while the CA IOUs and NEEA suggested limiting this range to reflect the temperatures of spaces where boilers may be installed. 87 FR 14622, 14631.

DOE investigated concerns regarding the ambient conditions as part of the January 2016 Final Rule (*see* 81 FR 2628, 2638; Jan. 15, 2016). Testing conducted in support of the January 2016 Final Rule indicated there was no definitive impact of variation of ambient conditions on the resultant AFUE, and DOE determined there was not adequate data to justify changing the test procedure to narrow the ranges. In the March 2022 NOPR, DOE provided a similar tentative determination based on the lack of sufficient evidence, and thus did not propose any changes at that time. 87 FR 14622, 14631–14632.

In response, while the CA IOUs supported incorporation by reference of ANSI/ASHRAE 103–2017, they encouraged DOE to reexamine the impacts of ambient conditions on AFUE ratings by conducting additional testing. (CA IOUs, No. 20 at p. 2) NYSERDA requested that DOE revise the test procedure to ensure that condensing and non-condensing boilers are tested under the same ambient conditions to allow consumers to make informed decisions between these products. NYSERDA also requested that DOE review the impacts of ambient temperature on boiler performance and review the jacket loss assumptions based on likely real-world operating conditions. Citing that DOE has not provided a further study on ambient conditions since the 2016 rulemaking, NYSERDA urged DOE to revisit the issue of ambient temperature impacts on consumer boiler performance and conduct additional analysis and/or testing either as part of the current rulemaking or in anticipation of the next statutorily mandated review. (NYSERDA, No. 23 at p. 5)

The Joint Advocates stated they did not believe that separate ambient conditions are necessary for non-condensing and condensing boilers, and that the range of allowable ambient temperatures is too broad to accurately measure energy use during a representative average use cycle. The Joint Advocates cited course material from Continuing Education and Development, Inc. indicating that a variation in ambient temperature of 20 °F can affect the thermal efficiency of a commercial package boiler by over 0.5 percent, and therefore suggested that DOE require the ambient temperature to be maintained between 65 °F and 85 °F for all consumer boilers. (Joint Advocates, No. 21 at p. 3)

Busse stated that a boiler tested at the current temperature and humidity limits should perform at a higher AFUE than when tested at a ''normal'' lab condition of 70 °F and 50 percent relative humidity due to higher water vapor content and higher dew point temperature and thus recommended limiting the test room conditions to 75 °F and 55 percent relative humidity. Busse noted that the National Bureau of Standards Information Report (''NBSIR'') recommended limits on the original test room conditions,[29] and that water vapor content and dew point temperature vary significantly with temperature (specifically providing information at 42 °F [average outdoor air temperature], 70 °F [''normal'' lab condition], and 85 °F [maximum allowable during AFUE test]). Busse also cited Burnham Holdings, Inc. (''BHI'') test data for a single condensing boiler which showed a change in AFUE of 1.3 percent when the relative humidity was changed from approximately 30 percent to 70 percent. (Busse, No. 22 at p. 5)

DOE notes the data collected thus far has been on a limited sample of boilers, and the information required to amend the ambient conditions should reflect the array of boiler designs on the market. The impact of the ambient air conditions would vary based on how the ambient air interacts with the boiler during its normal operation. As noted previously, in the January 2016 NOPR, DOE concluded that the test data was not definitive enough to provide justification for changing the ambient conditions. Regarding the data submitted by Busse, DOE notes that BHI also provided that data point in a comment responding to the May 2020 RFI (BHI, No. 11 at p. 2, 11). As discussed in the March 2022 NOPR, although BHI provided test data for a single unit showing a difference in performance under different conditions, DOE notes that DOE's previous test data, obtained from multiple units, did not indicate conclusively that ambient test conditions within the current bounds cause substantive differences in AFUE. As a result, DOE is not amending the test procedure for consumer boilers to narrow or revise the ambient test conditions at this time due to insufficient conclusive evidence demonstrating the impact on AFUE for various boiler types.

3. Combustion Settings

In the course of the rulemaking for the January 2016 Final Rule, to provide for greater consistency in burner airflow settings during testing, DOE proposed specifying that the excess air ratio, flue oxygen (''O_2'') percentage, or flue carbon dioxide (''CO_2'') percentage be within the middle 30th percentile of the acceptable range specified in the I&O manual. 80 FR 12876, 12883, 12906 (Mar. 11, 2015). In absence of a specified range in the I&O manual, DOE proposed requiring the combustion airflow to be adjusted to provide between 6.9 percent and 7.1 percent dry flue gas O_2, or the lowest dry flue gas O_2 percentage that produces a stable flame, no carbon deposits, and an air-free flue gas carbon monoxide (''CO'') ratio below 400 parts per million (''ppm'') during the steady-state test described in section 9.1 of ANSI/

monitoring/climate-at-a-glance/national/time-series. Last accessed October 7, 2022.

[29] Busse's comment references two reports from National Bureau of Information: NBSIR 78–1543: ''Recommended Testing and Calculation Procedures for Determining the Seasonal Performance of Residential Central Furnaces and Boilers'' (September 1978) and NBSIR 80–2110, ''Recommended Testing and Calculation Procedures for Estimating the Seasonal Performance of Residential Condensing Furnaces and Boilers'' (April 1981).

ASHRAE 103–2007, whichever is higher. 80 FR 12876, 12906. However, after considering comments regarding the representativeness of the proposal and the potential impact on rated AFUE, DOE determined in the January 2016 Final Rule that further study was needed to determine how such changes would impact AFUE ratings. 81 FR 2628, 2636.

In the May 2020 RFI, DOE requested comment on whether more specific instructions for setting the excess air ratio, flue O_2 percentage, and/or flue CO_2 percentage should be provided in the consumer boilers test procedure, and if so, what those instructions should entail. 85 FR 29352, 29356. DOE was particularly interested in understanding whether such a change would improve the representativeness of the test method, and whether it would impact test burden.

In the March 2022 NOPR, after considering comments received in response to the May 2020 RFI, DOE tentatively concluded that it lacked sufficient data and information to indicate that establishing a requirement for setting the excess air ratio, flue O_2 percentage, and/or flue CO_2 percentage would provide ratings that are more representative than the ratings provided under the current approach. Therefore, DOE tentatively determined to maintain the current test procedure and did not propose to establish a requirement for setting the excess air ratio, flue O_2 percentage, and/or flue CO_2 percentage. 87 FR 14622, 14633.

In response to the March 2022 NOPR, the CA IOUs encouraged DOE to examine the impacts of excess air ratio, flue oxygen percentage, and flue carbon dioxide percentage on AFUE ratings by conducting additional testing. (CA IOUs, No. 20 at p. 2) The Joint Advocates also encouraged DOE to investigate the efficiency impacts of combustion airflow settings and to consider establishing criteria around those settings in the test procedure in order to provide more accurate product rankings. The Joint Advocates asserted that excess air, which can be determined by flue gas O_2 and CO_2 concentrations, affects combustion efficiency and, as an example, cited a 2002 fact sheet published by the National Renewable Energy Laboratory that indicated combustion efficiency of commercial boilers can be increased by 1 percent for each 15 percent reduction in excess air ratio.[30] (Joint Advocates, No. 21 at p. 3–4)

NYSERDA recommended that DOE study how excess oxygen impacts the efficiency of the boiler operation. NYSERDA pointed out that DOE received input from multiple stakeholders regarding changes to excess air ratio, flue O_2 percentage, and/or flue CO_2 percentage in the 2016 rulemaking cycle. NYSERDA urged DOE to either revisit this proposal regarding excess oxygen or commit to further study of this topic for a future revision. (NYSERDA, No. 23 at p. 4–5)

Busse suggested updating the test procedure to include two requirements: (1) verify reduced input rate is 98 percent or greater than nameplate minimum input rate and, if less than 98 percent, adjust controls or settings as specified in the I&O manual and restart test at maximum input rate or, if 98 percent or greater, no additional control or setting changes are allowed; and (2) verify combustion products do not exceed 400 parts per million air-free and there are no deposits of carbon on the burner, and correct these conditions, if necessary, as specified in the I&O manual. Busse stated that a reduced input rate below 98 percent of nameplate minimum input rate would likely result in a higher efficiency, and that requiring adjustment and restarting a test when above 102 percent of nameplate minimum input rate could increase test burden. Busse further stated that these provisions would strive towards more accurate AFUE results while not greatly increasing the testing burden. (Busse, No. 22 at p. 10)

In the January 2016 Final Rule, DOE explained that industry stakeholders indicated that the current practice is typically to use the CO_2 percentage at the ''top'' of the manufacturer's specified range, and in some cases, even higher than that. Stakeholders provided data suggesting that the impacts on AFUE could be significant but variable,[31] and there was also concern that some products may not feature any means of providing combustion setting adjustment. Finally, commenters indicated that DOE must evaluate the burden associated with potential re-testing should combustion setting specifications require manufacturers to re-rate their products. As discussed previously, DOE ultimately agreed that further study was needed on the impacts of the CO_2 percentage on AFUE and, therefore, declined to adopt the proposed amendments. 81 FR 2628, 2635–2636. Thus, there remained a lack of certainty regarding what settings would be most representative of field use.

DOE did not receive any information in response to the March 2022 NOPR that provided further clarity on this issue. Therefore, DOE has determined that it still lacks sufficient information to indicate that establishing a specification for excess air ratio, flue O_2 percentage, and/or flue CO_2 percentage would provide ratings that are more representative than the ratings provided under the current approach, and that doing so would not be unduly burdensome.

Therefore, DOE is maintaining the current instructions and is not establishing additional requirements specifying excess air ratio, flue O_2 percentage, and/or flue CO_2 percentage.

4. Supplemental Test Instructions

In the March 2022 NOPR, DOE responded to comments from BHI suggesting that DOE create a repository of supplemental test instructions, similar to that currently in place for commercial boilers,[32] instead of requiring a waiver to allow for use of specific test instructions not included in the I&O manual or the DOE test procedure. 87 FR 14622, 14635–14636. Specifically, BHI asserted that control systems are increasingly complex, which makes it impractical to run the test without special tools or codes, and that there are safety and reliability concerns with putting testing-specific instructions in the I&O manual. BHI also asserted that the use of the waiver process for these test instruction issues is burdensome, unnecessary, and inconsistent with the test procedure for commercial boilers.

In response, DOE noted that BHI did not provide specific examples of test instructions that would not be able to be included in the I&O manual due to concerns about safety or reliability, and that would thus need to be presented in a waiver. In addition, DOE noted it has not received any petitions for waiver for any basic models of consumer boilers,

[30] The fact sheet referenced by the Joint Advocates is available at: *https://www.nrel.gov/docs/fy02osti/31496.pdf.* (Last accessed 11/3/2022).

[31] AHRI stated that the results of the testing of three residential boilers that it conducted at Intertek Testing Laboratories indicate that the proposed revised burner setup requirements change AFUE by 0.3 percent for each 1 percent difference in the CO_2 values. By contrast, Burnham stated that based on test data that it provided, for an oil-fired hot water boiler with an 11.5 to 12.5 percent CO_2 adjustment range in the I&O manual, DOE's proposed adjustment would reduce AFUE by as much as 1.0 percent compared to the rating under the existing test procedure. 81 FR 2628, 2636.

[32] For commercial boilers, DOE provides that a certification report may include supplemental testing instructions, if such information is necessary to run a valid test. Specifically, supplemental information must include any additional testing and testing set-up instructions (*e.g.,* specific operational or control codes or settings) which would be necessary to operate the basic model under the required conditions specified by the relevant test procedure. 10 CFR 429.60(b)(4).

indicating there is not a problem with testing absent such additional information. Therefore, DOE did not propose to establish a repository for test instructions for consumer boilers and stated that if testing of a consumer boiler necessitates controls or instructions other than those included in the I&O manual, manufacturers may petition for a waiver under the process established at 10 CFR 430.27. DOE sought further comment on whether supplemental test instructions are necessary for consumer boilers. 87 FR 14622, 14636.

Rheem recommended that DOE use the I&O manual provided with the product as the primary instruction for testing a consumer boiler, and where a manufacturer participates in a third-party certification program (such as AHRI's) and declares supplemental instructions for product testing, the manufacturer should have the option to use such instructions for audit or enforcement testing. (Rheem, No. 18 at p. 5) A.O. Smith recommended that some supplemental instructions from manufacturers could ensure consistency in testing, such as the need to use the recirculation loop to prevent flashing in the heat exchanger or instructions to remove a water temperature sensor and plug the opening. (A.O. Smith, No. 24 at p. 5) Busse suggested that supplemental test instructions are necessary for minimum input rate adjustment (for step-modulating condensing boilers) and for steam boiler low water cutoff (wherein the feature periodically turns off the burner to monitor the settled water level and therefore prevents the boiler from operating continuously during a steady-state test). (Busse, No. 22 at p. 9)

As discussed in the March 2022 NOPR, DOE has not received any petitions for waivers for any basic models of consumer boilers, indicating there is not a problem with testing absent such additional information. Should testing of a consumer boiler necessitate controls or instructions other than those included in the I&O manual, manufacturers may petition for a waiver under the process established at 10 CFR 430.27.

5. Input Rates for Step Modulating Boilers

Appendix N includes a number of specific provisions for consumer boilers with step modulating controls. Boilers with step modulating controls are capable of operating at reduced input rates (*i.e.,* less than that maximum nameplate input rate) and gradually or incrementally increasing or decreasing the input rate as needed to meet the heating load. The test procedure currently requires step modulating boilers to be tested at the maximum rate and the minimum (*i.e.,* reduced) input rate for the steady-state test (referencing section 9.1 of ANSI/ASHRAE 103–1993), the reduced input rate for the cool-down test (referencing section 9.5.2.4 of ANSI/ASHRAE 103–1993), and the reduced input rate for the heat-up test (referencing section 9.6.2.1 of ANSI/ASHRAE 103–1993). In addition, both the optional tracer gas test and the measurement of condensate under cyclic conditions, when conducted, are performed at the reduced input rate (referencing sections 9.7.5 and 9.8 of ANSI/ASHRAE 103–1993, respectively). ANSI/ASHRAE 103–2017 contains the same input rate requirements for modulating boilers as ANSI/ASHRAE 103–1993.

In the May 2020 RFI, DOE requested comment on whether the existing provisions for testing step modulating boilers appropriately reflect the performance of such boilers. If not, DOE sought specific recommendations on the changes that would be necessary to make the test procedure more representative for such products. 85 FR 29352, 29357. Commenters indicated these provisions were adequate, and DOE did not propose any amendments to the provisions for testing step modulating boilers in the March 2022 NOPR. 87 FR 14622, 14633.

In response to the March 2022 NOPR, BWC stated that it appreciated DOE not proposing that step modulating units account for operation at any additional input rates beyond those specified in the current test procedure. BWC stated that the test methods in ANSI/ASHRAE 103–2017 sufficiently measure the performance of these units at different input rates and are representative of a product's average use cycle. (BWC, No. 19, p. 4)

For the reasons discussed in the March 2022 NOPR, and in consideration of the comments received, DOE is not adopting any changes to the provisions for testing step modulating boilers in this final rule.

6. Return Water Temperature

The test procedure at appendix N currently requires a nominal return water temperature (''RWT'') of 120 °F to 124 °F for non-condensing boilers and 120 °F ± 2 °F for condensing boilers (*see* section 7 of appendix N and sections 8.4.2.3 and 8.4.2.3.2 of ANSI/ASHRAE 103–1993, which are incorporated by reference).

In response to the May 2020 RFI, the CA IOUs requested that DOE consider adopting multiple RWTs in the amended test procedure for consumer boilers, consistent with the methodology being developed by the ASHRAE Standard 155P Committee for testing and rating commercial boilers, which requires testing at multiple RWTs depending on the operational characteristics of the boiler. As discussed in the March 2022 NOPR, DOE considers the impact of varying RWTs on field-installed efficiency in its energy conservation standards rulemakings. In the previous energy conservation standards rulemaking for consumer boilers, DOE developed AFUE adjustment factors for low, medium, and high RWT scenarios and estimated that, on average, AFUE would vary from the rated value by 2.66 percent to +3.15 percent depending on the model characteristics and RWT (*see* 81 FR 2320, 2354); however, DOE noted there is still a wide range of potential RWTs in the field. Thus, in the March 2022 NOPR, DOE sought additional comment on whether the RWT requirements in the current test method and ANSI/ASHRAE 103–2017 are representative and appropriate, and whether any specific changes to the required conditions could improve representativeness. DOE also sought comment on any associated test burden with changing RWTs. 87 FR 14622, 14633.

In response, the CA IOUs reiterated their request for DOE to review whether the 120 °F RWT requirement is appropriately representative of real-world operating conditions. (CA IOUs, No. 20 at p. 2)

AHRI and AGA & APGA urged DOE to align return water temperatures with those in ANSI/ASHRAE 103–2017. (AHRI, No. 26 at p. 3; AGA & APGA, No. 25 at p. 2)

BWC supported DOE's tentative conclusion of including the single return water temperature specified in ANSI/ASHRAE 103–2017 for ease of comparison between models and manufacturers. (BWC, No. 19 at p. 4) BWC asserted that a single condition would not increase the test burden. (BWC, No. 19 at p. 4)

A.O. Smith commented that the current return water temperature is representative of an average value for the wide range of operating temperatures in the field and indicated that requiring testing to multiple conditions may require adjustment of the standards. A.O. Smith added that non-condensing boilers are more likely to be installed in systems with higher supply and return water temperatures, and condensing boilers are more likely to be installed in systems with lower temperatures. (A.O. Smith, No. 24 at p.

3–4) A.O. Smith stated that testing at multiple water temperatures would add testing burden to a test that could already span two days to complete, and that the burden to retest and rerate products would also include updating heat output ratings and safety certifications. (*Id.*)

Rheem supported maintaining the return water temperature in the current test method, asserting that any change that could make the return water temperature more representative would be outweighed by the testing and certification burden on manufacturers. Specifically, Rheem noted that slight changes to the water temperature would not produce significantly more representative results, and major changes would require retesting of nearly all consumer boilers. (Rheem, No. 18 at p. 4)

Crown and U.S. Boiler supported the use of the water temperatures specified by ANSI/ASHRAE 103–2017 to reduce testing burden and complication. Crown and U.S. Boiler stated that a single set of water temperatures for all types of hot water boilers is appropriate to avoid consumer confusion, increased certification burden, and departure from the industry test method. Crown and U.S. Boiler added that changes to these water temperatures would cause significant changes in AFUE ratings for condensing boilers. (Crown, No. 16 at p. 3–4; U.S. Boiler, No. 17 at p. 3–4)

NYSERDA noted that return water temperature has a significant impact on boiler performance and urged DOE to incorporate return water temperatures that more accurately reflect real-world conditions. NYSERDA stated that the 120 °F return water temperature is too low, does not represent the boiler running conditions according to a research study done by The Electric and Gas Program Administrators of Massachusetts Part of the Residential Evaluation Program Area in 2015,[33] and should be considered closer to 140 °F. NYSERDA claimed that the rationale for choosing the 120 °F return water temperature from 1978 is outdated and inconsistent with DOE's current test procedure methodologies for commercial HVAC equipment. NYSERDA recommended that DOE test at both 120 °F and 140 °F for return water temperatures but stated that if DOE had to test at only one temperature, it should be 140 °F. (NYSERDA, No. 23 at p. 2–4)

The Joint Advocates urged DOE to continue to investigate return water temperatures used in the test procedure to capture more representative performance, directing attention to data presented in appendix 7B to DOE's preliminary analysis technical support document (''TSD''),[34] which indicated that there was an impact of return water temperature on the thermal efficiency[35] of a boiler. The Joint Advocates suggested that multiple temperatures (*i.e.,* 108 °F and 158 °F) would be more appropriate to be able to differentiate amongst different condensing boiler models, and that non-condensing boilers should be tested at a higher temperature of 158 °F. (Joint Advocates, No. 21 at p. 2–3)

Busse stated that the current RWT settings were from NBSIR 80–2110 and asserted that the underlying assumptions for the current return water temperature found in NBSIR 80–2110, pages 1–2 are out of date or invalid.[36] Busse stated that the average distribution system water temperature in the current DOE test procedure should be closer to 133 °F based on heat load calculations to maintain a home at 65 °F. Busse noted that the current test procedure has an average distribution system water temperature of 130 °F (based on a return water temperature of 120 °F and an outlet temperature of 140 °F). However, Busse added that the average distribution system water temperature may be too high based on current or historically available heat distribution products, and that review literature from two cast-iron baseboard manufacturers and two finned-tube copper baseboard manufacturers suggest an average distribution system water temperature of 127 °F would be more representative. Busse stated that current industry practice for step-modulating, condensing boilers may not allow operation at the original 190 °F average boiler water temperature (200 °F supply) or deliver 140 °F supply temperature at the 42 °F average outdoor temperature at the default controller settings. (Busse, No. 22 at p. 2–4) Busse recommended that a separate test should be required for determining heating capacity using a 180 °F return supply water temperature (or the maximum supply temperature allowed by the control system, if less than 200 °F), or, alternatively, the current return water temperature could be used with consideration of sensible heat losses only in order to estimate the steady-state efficiency for a noncondensing operation at high return water temperatures. (Busse, No. 22 at p. 6) Busse also asserted that boilers with reported ratings of 95 percent or 96 percent AFUE have such ratings as a result of a flawed calculation in the current test procedure, which does not account for the portion of the season during which the boiler would operate in a non-condensing mode (due to return water temperatures being higher than 120 °F in certain conditions). (Busse, No. 22 at p. 11–12)

As acknowledged by commenters, the specification of RWT has a substantive impact on the AFUE of boilers. Condensing boilers in particular achieve higher efficiency levels by extracting latent heat from the flue gases in addition to sensible heat (*i.e.,* the condensation of flue gases releases a substantial amount of energy into the water that is being heated). However, flue gases can condense only if the dew point temperature of the vapor is reached. If the return (inlet) water is hotter than this dew point temperature, then condensation of the flue gases cannot occur in the heat exchanger, and the boiler operates in a non-condensing mode, reducing AFUE.

In addition to the recommendations provided by commenters, DOE research indicates a range of RWTs in consumer applications. DOE is aware that many existing consumer boiler installations require the RWT to be 160 °F and some even as high as 180 °F.[37] However, as new applications such as radiant floor heating and heat pump boilers become more prevalent in the market, DOE recognizes that some new boilers may be installed in homes that require lower

[33] High Efficiency Heating Equipment Impact Evaluation, Prepared for: The Electric and Gas Program Administrators of Massachusetts Part of the Residential Evaluation Program Area, March 2015 at 22, available at *ma-eeac.org/wp-content/uploads/High-Efficiency-Heating-Equipment-Impact-Evaluation-Final-Report.pdf.*

[34] Appendix 7B of the preliminary analysis TSD is available at *www.regulations.gov* at Docket Number EERE–2019–BT–STD–0036. The data can be found in chapter 7B, page 11.

[35] Thermal efficiency for a commercial packaged boiler is determined using test procedures prescribed under 10 CFR 431.86 and is the ratio of the heat absorbed by the water or the water and steam to the higher heating value in the fuel burned. Data presented in the May 2022 Preliminary Analysis TSD reflected the performance of commercial packaged boilers due to the absence of information on consumer boilers.

[36] Kelly, George E. and Kuklewicz, Mark E., NBSIR 80–2110: Recommended Testing and Calculation Procedures for Estimating the Seasonal Performance of Residential Condensing Furnaces and Boilers, National Bureau of Standards (Sponsored by U.S. Department of Energy), April 1981.

[37] On May 4, 2022, DOE published in the **Federal Register** a notice of availability of the preliminary analysis for energy conservation standards for consumer boilers (the ''May 2022 Preliminary Analysis''). 87 FR 26304. DOE provided a technical support document (''TSD'') for the May 2022 Preliminary Analysis in the rulemaking docket. *Id.* In the energy use analysis of the May 2022 Preliminary Analysis TSD, DOE estimated that 90 percent of condensing boilers installed as replacements to non-condensing boilers would be subject to a higher RWT of 158 °F to 160 °F.

RWTs. In addition, condensing boilers in new installations would be subject to lower RWTs because radiant floor heating and hydronic air handler applications represent a substantial proportion of new hot water boiler installations.[38] DOE research indicates some installations have RWT conditions as low as 85 °F in certain cases.[39] DOE notes that the midpoint of the range of RWTs observed through DOE's research (ranging between 85 °F and 160 °F) is 122 °F, which is reasonably close to the 120 °F condition specified in appendix N and the industry test procedures. Given these considerations, DOE has determined that testing a consumer boiler at a single ''high'' RWT, as suggested by the Joint Advocates, NYSERDA, and Busse, would be less representative than the conditions specified by the current test procedure.

DOE also acknowledges the concerns raised by manufacturers regarding the potential need to retest and recertify all consumer boilers if a new test condition were to be required in addition to the currently established 120 °F condition. EPCA requires DOE to establish test procedures that are reasonably designed to produce test results that measure energy efficiency of a consumer boiler during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) Based on the considerations discussed in this section, DOE has determined that it lacks data and information to conclude that a different RWT (or multiple RWTs) would be more representative than the current RWT requirements such that it would justify the potential burden of such a change. Hence, in this final rule, DOE is finalizing its proposal from the March 2022 NOPR to incorporate by reference the test conditions in ANSI/ASHRAE 103–2017. Should additional data or information become available in the future, DOE would consider this topic again in a subsequent test procedure rulemaking.

7. Standby Mode and Off Mode Electrical Energy Consumption

As discussed in section I.A of this final rule, EPCA requires that DOE amend test procedures to include standby mode and off mode energy consumption, ''taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission.'' (42 U.S.C. 6295(gg)(2)(A)) The DOE test method currently references IEC 62301 (Edition 2.0 2011–01), which provides instructions for measuring standby mode and off mode energy consumption. IEC 62301 provides several options for measuring the standby mode and off mode power consumption using either the ''sampling method,'' ''average reading method,'' or ''direct meter reading method.'' Although these methods vary, if the standby or off mode consumption is stable, each method can be completed in under 1 hour, and the sampling method can be completed in as little as 15 minutes.

In the March 2022 NOPR, DOE tentatively determined that the provisions in IEC 62301 provide an appropriate representation of standby mode and off mode energy consumption of consumer boilers and are not unduly burdensome; hence DOE did not propose any changes. Because commenters responding to the May 2020 RFI recommended streamlining the procedure for determining standby mode and off mode energy consumption, in the March 2022 NOPR DOE requested further comment on whether a simplified approach for measuring standby mode and off mode electrical energy consumption is appropriate and would provide accurate, representative results that are comparable to those obtained with IEC 62301. 87 FR 14622, 14634.

In response, BWC commented that the standby mode and off mode test methods are appropriate and do not need to be amended at this time. (BWC, No. 19 at p. 4)

Rheem stated that the current approach for measuring standby and off mode electrical energy consumption is not overly burdensome and should be maintained. Rheem also recommended that DOE examine a combined AFUE metric that includes standby and off mode electrical energy use, asserting that an increase in standby and off mode energy use may be needed to accommodate an increase in overall efficiency, and thus a combined AFUE metric would provide for greater design flexibility. (Rheem, No. 18 at p. 4)

DOE considered an integrated AFUE metric (''$AFUE_I$'') in a test procedure final rule published October 20, 2010 (''October 2010 Final Rule''), which established the standby mode and off mode electrical energy use metrics. 75 FR 64621, 64626–64627 (Oct. 20, 2010). In the October 2010 Final Rule, DOE explored the possibility of regulating $AFUE_I$; however, commenters objected that the approach would provide an ineffective basis for regulation, and thus it was not ''technically feasible'' to integrate AFUE with standby mode and off mode energy consumption. *Id.* Separate metrics were established because the magnitude of the standby mode and off mode energy consumption was very small compared to the active mode fuel consumption, and, as a result, it was not possible to discern different levels of standby and off mode power consumption (*i.e.,* $AFUE_I$ values were essentially identical to AFUE values). *Id.*

Neither Rheem nor other commenters have presented DOE with any information to suggest that the conclusions from the October 2010 Final Rule—specifically, that an integrated metric would not be technically feasible—are no longer applicable. Furthermore, DOE is not aware of any current industry-accepted test procedure that combines the current AFUE metric with the standby mode and off mode power consumption metrics. For these reasons, DOE is not adopting any new provisions for a combined metric in this final rule.

A.O. Smith recommended eliminating the standby mode and off mode power consumption testing due to the little impact the associated power consumption has on the total efficiency of a consumer boiler (less than a fraction of one percent). A.O. Smith indicated that procuring the adequate equipment and instrumentation required for this testing is burdensome. A.O. Smith also commented that removing these requirements would afford manufacturers the opportunity to potentially add safety enhancements such as carbon monoxide sensors, which require a small heating element to prevent premature failure, as well as options for control displays and ways to reduce cycling losses. (A.O. Smith, No. 24 at p. 4) A.O. Smith recommended that if DOE were to keep the standby mode and off mode tests as part of the test procedure, the standby mode and off mode power consumption should be measured with a simple current measurement with a calibrated watt meter. (A.O. Smith, No. 24 at p. 6)

As discussed, EPCA requires that DOE include in its test procedures a method

[38] In the May 2022 Preliminary Analysis, DOE estimated that condensing boilers in new installations (new constructions or new owners) would be subject to an average RWT of 108 °F. See Appendix 7B of the preliminary analysis TSD, available at: *www.regulations.gov/document/EERE-2019-BT-STD-0036-0021.*

[39] *See,* for example: *www.barronheating.com/blog/the-book-on-radiant-heating-when-it-makes-sense-and-when-it-might-not/#:~:text=Radiant%2Dfloor%20heating%20systems%20typically,55%E2%80%9370%C2%B0C).* (Last accessed on October 6, 2022)

for measuring standby mode and off mode power consumption, unless technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) Further, in doing so, EPCA requires that DOE must consider IEC Standard 62301 and IEC Standard 62087. (42 U.S.C. 6295(gg)(2)(A)) Section 4.4 of IEC 62301 provides instruction on selecting acceptable power measuring instrumentation by specifying power measurement uncertainty bounds, frequency response, and long-term averaging (integrating) requirements. DOE notes that if a calibrated watt meter is capable of meeting these requirements, then it may be used in accordance with section 4.4 of IEC 62301.

AHRI noted that standby mode and off mode power consumption should not count as a loss because all energy brought into the system provides useful resistive heat to the building. AHRI stated that similar logic is used to give electric boilers a rating of 100 percent efficiency. (AHRI, No. 26 at p. 3)

While electrical component power draws that dissipate small amounts of heat to the surroundings may contribute to useful heating to the building, the building does not always demand heating. During the cooling season, any heat dissipated would be counterproductive. Furthermore, not all boilers are located in conditioned spaces. In addition, as discussed previously, EPCA requires DOE to include in its test procedures a method for measuring standby mode and off mode power consumption. (42 U.S.C. 6295(gg)(2)(A)) For these reasons, DOE makes no change to its inclusion of standby mode and off mode power in this final rule.

In conclusion, DOE has determined that no changes to the standby mode and off mode test provisions are warranted. As such, the new appendix EE test procedure maintains the same test methods for measuring these metrics as specified in the current appendix N test procedure.

8. Full Fuel Cycle Efficiency

The full fuel cycle (''FFC'') accounts for the energy consumed in extracting, processing, and transporting fuels. In the March 2022 NOPR, DOE responded to comments received in response to the May 2020 RFI requesting that DOE consider incorporating an FFC analysis into the test procedure in order to allow for direct comparisons between fossil fuel-fired systems and electric systems. 87 FR 14622, 14634. DOE responded that FFC is typically considered in energy conservation standards rulemakings—not as a metric for representing product efficiency. *Id.* In the March 2022 NOPR, DOE maintained its previous conclusion from the January 2016 Final Rule that a mathematical adjustment to the test procedure to account for FFC is not appropriate because the mathematical adjustment to the site-based energy descriptor relies on information that is updated annually, which would require annual updating of the test method. *Id.*

In response to the March 2022 NOPR, BWC stated that the FFC efficiency and source efficiency analysis are not appropriate to include in the Federal test procedure. (BWC, No. 19, p. 4)

For the reasons discussed in the March 2022 NOPR, DOE maintains in this final rule its previous determination not to account for FFC in the consumer boiler test procedure.

9. Idle Losses

In the March 2022 NOPR, DOE responded to comments received in response to the May 2020 RFI requesting that DOE consider ''idle losses'' that are not captured in the AFUE metric. 87 FR 14622, 14628. Specifically, Energy Kinetics asserted that oversizing of boilers can lead to wasted energy to heat up the boiler but not contribute to the heating of the hydronic loop. In the March 2022 NOPR, DOE stated that EPCA (42 U.S.C. 6295(f)(3)(A)–(B)) requires hot water boilers to have an automatic means for adjusting water temperature, which limits idle losses. DOE indicated that idle losses could be further addressed in the determination of AFUE; however, there was insufficient data to propose amendments to the test procedure to do so. DOE sought further comment from interested parties on the topic. 87 FR 14622, 14628.

In response to the March 2022 NOPR, Rheem agreed with DOE's statement that the prescriptive design requirements in EPCA at 42 U.S.C. 6295(f)(3) effectively reduce idle losses in the field. Rheem noted that if idle losses, both electrical and fossil fuel, were fully accounted for in the AFUE metric, then a standard could be proposed that would not require separate design requirements. (Rheem, No. 18 at p. 5)

DOE has determined that there remains insufficient information to further address idle losses in this rulemaking as it pertains to the determination of AFUE in the new appendix EE test procedure for consumer boilers.

H. Alternative Efficiency Determination Methods

At 10 CFR 429.70, DOE includes provisions for alternative efficiency determination methods (''AEDMs''), which are computer modeling or mathematical tools that predict the performance of non-tested basic models. They are derived from mathematical models and engineering principles that govern the energy efficiency and energy consumption characteristics of a type of covered equipment. These computer modeling and mathematical tools, when properly developed, can provide a relatively straight-forward and reasonably accurate means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing. 78 FR 79579, 79580 (Dec. 31, 2013; the ''December 2013 AEDM Final Rule''). Where authorized by regulation, AEDMs enable manufacturers to rate and certify their basic models by using the projected energy use or energy efficiency results derived from these simulation models in lieu of testing. *Id.* at 78 FR 79580.

DOE does not currently authorize the use of AEDMs for consumer boilers, whereas DOE does authorize the use of AEDMs for commercial packaged boilers.[40] Manufacturers of consumer boilers (or furnaces more generally) are not authorized to use an AEDM to determine ratings for these products. However, manufacturers of cast-iron boilers may determine AFUE for models at a capacity other than the highest or lowest of the group of basic models having identical intermediate sections and combustion chambers through linear interpolation of data obtained for the smallest and largest capacity units of the family. *See* 10 CFR 429.18(a)(2)(iv)(A). These provisions already provide manufacturers with an alternative method of rating consumer boilers without testing every model, and this alternative method reduces manufacturer test burden.

In the March 2022 NOPR, DOE requested comment on whether AEDM provisions similar to those in place for commercial equipment would be necessary and appropriate for consumer boilers. 87 FR 14622, 14635.

A.O. Smith stated that adding an AEDM option for consumer boilers would be reasonable; however, there is

[40] In the December 2013 AEDM Final Rule, DOE explained that the AEDM provisions extend to those products or equipment which ''have expensive or highly-customized basic models.'' 78 FR 79579, 79580. The current AEDM provisions for commercial HVAC equipment (including commercial package boilers, for example) were in part the result of a negotiated rulemaking effort by the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) in 2013. *Id.* Boilers designed for residential applications were not considered at the time. 78 FR 79579.

greater value to have an AEDM for commercial products given that those models can be engineered to order. (A.O. Smith, No. 24 at p. 4) Busse indicated that the breadth of a product line with similar geometries and performance would not seem to justify an AEDM; however, an AEDM may be the only method to avoid testing each model. (Busse, No. 22 at p. 8)

In consideration of these comments, as well as considerations discussed in the March 2022 NOPR (*see* 87 FR 14622, 14635), in this final rule, DOE concludes that manufacturer testing burden is alleviated by the linear interpolation provisions for cast-iron boilers, such that an AEDM for consumer boilers more broadly is not warranted at this time.

I. Certification Provisions for Cast-Iron Boilers

As discussed in the March 2022 NOPR, the certification provisions at 10 CFR 429.18(a)(2)(iv)(A) alleviate testing burden for cast-iron boilers, which are commonly constructed of identical cast-iron heat exchanger sections. Boilers of the same cast-iron product family are often constructed so that the heating capacity can be increased by adding more sections to the heat exchanger. When a product family is designed in this way, linear interpolation is accurate [41] to predict the performance of intermediately-sized boilers. The March 2022 NOPR sought data and other information that would demonstrate that using a linear interpolation method for heat exchanger materials other than cast-iron would produce representative test results. 87 FR 14622, 14635.

AHRI and AGA and APGA supported extending of the use of linear interpolation to heat exchanger materials other than cast-iron, stating that linear interpolation is a valid calculation method for these products, as proven by the current cast-iron allowance. (AHRI, No. 26 at p. 4; AGA and APGA, No. 25 at p. 2)

A.O. Smith supported use of the interpolation method for boilers with heat exchangers other than cast-iron, stating that its copper finned-tube boilers have a tray of tubes that increase in length proportionate to input rate, are consistent in geometry, and have only incremental changes proportionate to input rate. A.O. Smith added that its Lochinvar brand models have seven input rates ranging from 45,000 Btu/h through 260,000 Btu/h and all perform near 84.0-percent AFUE. (A.O. Smith, No. 24 at p. 5)

Rheem did not support the use of linear interpolation for certification of consumer boilers beyond what is already allowed for cast-iron boilers, stating that interpolation produces less accurate results than results derived from actual tests. (Rheem, No. 18 at p. 4)

Busse did not support using a linear interpolation method for heat exchanger materials other than cast-iron. Busse asserted that any difference and/or non-proportionality in excess air, flue loading, and/or flue cross-sectional area could produce non-linear results, which is also why cast-iron units equipped with draft hoods, draft diverters, or induced draft systems are more prone to producing non-linear results. (Busse, No. 22 at p. 7–8)

Based on DOE's review of product literature, DOE has determined that heat exchangers made of different materials may not be constructed with identical additive components the way cast-iron sectional heat exchangers are constructed; hence, the linear interpolation method may be less viable for other heat exchanger materials. DOE notes that stakeholders commenting in support of using linear interpolation for materials other than cast-iron did not provide any data to demonstrate the viability of a linear interpolation method for other heat exchanger materials. Given the concerns raised by Rheem and Busse regarding the potential for non-linear results for intermediately-sized boilers with non-cast-iron heat exchangers, as well as DOE's review of product literature, DOE has concluded that there is not enough information to substantiate such a provision at this time. Hence, in this final rule, DOE maintains that the linear interpolation AEDM method applies only to cast-iron boilers.

Additionally, Busse recommended the following clarifications for using linear interpolation: (1) clarify if interpolated values are derived from truncated or pre-truncated AFUE values of smallest and largest capacity units, (2) update 10 CFR part 429 to allow interpolation of heating capacity derived from unrounded $Effy_{SS}$ values of smallest and largest capacity units, and (3) require third-party test agencies to qualify AFUE and heating capacity on an ''interpolated'' model. (Busse, No. 22 at p. 7–8)

First, as discussed in section III.F.8, DOE has amended the certification requirements for AFUE in the July 2022 Certification Final Rule to require that AFUE must be rounded to the nearest tenth of a percentage point when this value is reported. 87 FR 43968. Thus, as of this final rule, truncation is no longer used to report AFUE. DOE is clarifying in this final rule, however, that manufacturers may use either the rounded or unrounded AFUE values of the smallest and largest capacity units for linear interpolation. DOE is making this determination based on the fact that the results of the linear interpolation would be minimally impacted by rounding AFUE to the nearest tenth of a percentage point, compared to using unrounded values.

Second, DOE notes that heating capacity (Q_{OUT}), which is calculated in the current test procedure as a function of steady-state efficiency ($Effy_{SS}$), is not required to be certified to DOE at this time, nor has DOE proposed to make this a requirement. Currently, manufacturers must certify the nameplate input rate (Q_{IN}), which is a separate metric and not a function of $Effy_{SS}$. Hence, DOE is not updating the linear interpolation provisions to include heating capacity (Q_{OUT}).

Third, requiring third-party testing to qualify AFUE ratings derived using the linear interpolation method would eliminate the reduction in test burden achieved with the alternate linear interpolation approach. DOE notes, however, that it can conduct assessment or enforcement testing on consumer boiler models, and this process serves to verify ratings (*see* subpart C to 10 CFR part 429).

In conclusion, DOE has determined in this final rule not to amend the linear interpolation provisions for consumer boilers.

J. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293©(2)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the

[41] Test data analyzed as part of the 1979 rulemaking which established these provisions showed that the annual fuel utilization efficiency, energy consumption, and estimated annual operating cost of sectional cast-iron boilers can be accurately predicted by a linear interpolation based on data obtained from units having the smallest and largest number of intermediate sections. 44 FR 22410, 22415 (April 13, 1979).

manufacturer will experience undue hardship. (*Id.*)

K. Test Procedure Costs

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In the March 2022 NOPR, DOE discussed that the amendments proposed to the test procedure for consumer boilers would be expected to have minimal impact on efficiency ratings such that manufacturers would not be required to retest and recertify ratings. 87 FR 14622, 14625, 14636. DOE also tentatively determined that the proposed amendments would not impact testing costs or increase burden. DOE requested feedback from stakeholders on these tentative determinations. *Id.*

A.O. Smith supported DOE's determination that the proposed incorporation by reference of ASHRAE 41.6–2014 will not increase testing burden. A.O. Smith also stated that DOE's estimate for third-party AFUE testing is reasonable and agreed that the proposed incorporation by reference of ANSI/ASHRAE 103–2017 is not unduly burdensome. (A.O. Smith, No. 24 at p. 5) A.O. Smith stated that although there may be fractional changes in the AFUE rating as a result of testing to the 2017 version, these should not necessitate retesting or rerating of any existing boilers. A.O. Smith also supported having a publicly available AFUE calculation tool to enhance consistency of results across the industry. (A.O. Smith, No. 24 at p. 3)

Rheem stated that the test costs under the proposed appendix EE test procedure are likely to remain similar to the current appendix N test procedure. (Rheem, No. 18 at p. 5)

AHRI stated that it previously commented that a move to ANSI/ASHRAE 103–2017 would not result in increased test burden; however, it had come to AHRI's attention that there are manufacturers using automated programs that would incur an increased test burden. (AHRI, No. 26 at p. 4)

DOE understands that AHRI is referring to pre-programmed cycle times, which execute burner on and off functions at pre-determined times per the DOE test procedure. From DOE's own testing of the impact of cycle timings at a third-party lab using an automated program, DOE has determined that these parameters can be simple to re-program and that doing so would not constitute undue test burden. As discussed in section III.D.1.c, other commenters requested DOE to further investigate whether the update in cycle times would increase burden by requiring retesting. Based on test data indicating little variation in test results due to the update in cycle times, DOE has determined that the impact of these amendments on ratings would be minimal. With regard to providing a publicly available AFUE calculation tool, DOE provides test report templates on its certification website,[42] including a template for the consumer boiler test procedure.

For this final rule, DOE has evaluated the impacts on ratings resulting from its adoption of the test methods in the updated industry test standard, ANSI/ASHRAE 103–2017. These updates are discussed in detail in section III.D.1 of this final rule. Based on this review, DOE has determined that manufacturers will be able to rely on data generated under the current test procedure. As such, it is unlikely that retesting of consumer boilers would be required solely as a result of DOE's adoption of the finalized amendments to the test procedure. However, if a manufacturer were to retest a model using the amended test procedure as finalized, DOE estimates that the cost of performing the amended AFUE test at a third-party laboratory would be $3,600, the same as the cost of performing the current AFUE test. This estimate represents an increase of $600 from the cost estimate in the March 2022 NOPR, to account for overall increases in laboratory testing fees.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

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

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19,

[42] Standardized test report templates are available online at: *www.energy.gov/eere/buildings/standardized-templates-reporting-test-results.*

2003. DOE certifies that this rule, if adopted, would not have significant economic impact on a substantial number of small entities. The factual basis of this certification is set forth below.

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including consumer boilers, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A)) DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

DOE did not receive written comments that specifically addressed impacts on small businesses or that were provided in response to the March 2022 NOPR.

The Small Business Administration (''SBA'') has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. *See* 13 CFR part 121. The products covered by this rule are classified under North American Industry Classification System (''NAICS'') code 333414,[43] ''Heating Equipment (except Warm Air Furnaces) Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 500 employees or fewer for an entity to be considered as a small business for this category. This employment figure is enterprise-wide, encompassing employees at the parent, subsidiary, and sister corporations.

Consistent with the March 2022 NOPR, DOE relied on the Compliance Certification Database (''CCD''),[44] the AHRI database,[45] the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[46] the ENERGY STAR Product Finder database,[47] and the prior consumer boiler energy conservation standards rulemaking to create a list of companies that import or otherwise manufacture the products covered by this final rule. DOE used the publicly available information and subscription-based market research tools (*e.g.,* reports from Dun & Bradstreet[48]) to identify 27 original equipment manufacturers (''OEMs'') affected by this final rule. Of the 27 OEMs, DOE identified five domestic OEMs of consumer boilers that met the SBA definition of a ''small business'' and are not foreign-owned and operated.

In this final rule, DOE updates appendix N to remove the provisions applicable only to consumer boilers and to rename the current appendix as ''Uniform Test Method for Measuring the Energy Consumption of Furnaces.'' Correspondingly, this final rule establishes a new test procedure at 10 CFR part 430 subpart B, appendix EE, ''Uniform Test Method for Measuring the Energy Consumption of Boilers'' (''appendix EE''). In the new appendix EE, DOE includes all provisions currently included in appendix N relevant to consumer boilers, with the following modifications:

(1) Incorporate by reference the current revision to the applicable industry standard, ANSI/ASHRAE 103–2017, ''Methods of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers.''

(2) Incorporate by reference the current revision of ASTM Standard D2156–09 (Reapproved 2018), ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels.''

(3) Incorporate by reference ANSI/ASHRAE 41.6–2014, ''Standard Method for Humidity Measurement.''

(4) Update the definitions to reflect the changes in ANSI/ASHRAE 103–2017 as compared to ANSI/ASHRAE 103–1993.

(5) Provide corrections to erroneous calculations and add clarifications to test conditions and setup requirements.

DOE is also removing the definition of outdoor furnace or boiler from 10 CFR 430.2.

DOE has determined that the amendments adopted in this final rule will not substantively impact the measured efficiency of consumer boilers or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. As outlined in Table II.1 of this final rule, the new appendix EE includes all provisions currently included in appendix N relevant to consumer boilers, with modifications to: harmonize with industry standard updates; provide corrections to erroneous calculations; and add clarifications to test conditions and setup requirements. Additionally, the update to use more representative cycle timings and oversize factors in the new appendix EE test procedure was demonstrated to have minimal impact on AFUE ratings as a result of testing. See section III.K of this final rule for additional details on test procedure costs. DOE also determined that the amendments would not increase the testing costs or burden associated with the DOE test procedure for consumer boilers, as the cost to test consumer boilers under the amended test procedure is $3,600, the same as the cost to test consumer boilers under the existing test procedure.

Therefore, DOE concludes that the cost effects accruing from the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted.

C. Review Under the Paperwork Reduction Act of 1995

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

[43] The SBA size standards (effective October 1, 2022) are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support-table-size-standards* (last accessed on December 1, 2022).

[44] U.S. Department of Energy Compliance Certification Database, available at: *www.regulations.doe.gov/certification-data/products.html.*

[45] The AHRI Database is available at: *www.ahridirectory.org* (last accessed March 3, 2021).

[46] California Energy Commission's MAEDbS is available at *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (last accessed September 22, 2021).

[47] The ENERGY STAR Product Finder database is available at *energystar.gov/productfinder/* (last accessed September 22, 2021).

[48] D&B Hoovers | Company Information | Industry Information | Lists, *app.dnbhoovers.com/* (last accessed September 29, 2022).

generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

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

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for consumer boilers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

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

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

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

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

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

I. Review Under Executive Order 12630

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

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

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

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

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for consumer boilers adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: ASHRAE Standard 103–2017, ASTM D2156–09 (R2018), and ASHRAE Standard 41.6–2014. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

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

N. Description of Materials Incorporated by Reference

ASHRAE 103–2017 is an industry accepted test standard that provides procedures for determining the annual fuel utilization efficiency of consumer furnaces and boilers. Specifically, the test procedure codified by this final rule references sections of ASHRAE 103–2017 for definitions, classifications, requirements, instruments, methods of testing, testing procedures, nomenclature, and calculations for determining the AFUE of consumer boilers.

ASHRAE 41.6–2014 is an industry accepted test standard that includes instructions for measuring the relative humidity of test chamber air. Specifically, the test procedure codified by this final rule references sections of ASHRAE 103–2017 that in turn reference ASHRAE 41.6–2014 for air humidity measurement instructions.

These test standards are all readily available from ANSI (*webstore.ansi.org*) or ASHRAE (*www.ashrae.org*).

ASTM D2156–09 (R2018) is an industry accepted test standard that includes instructions for determining the amount of smoke produced by an oil burner to ensure the burner is adjusted properly. Specifically, the test procedure codified by this final rule references sections of ASTM D2156–09 (R2018) for these instructions.

This test standard is readily available from ASTM International (*www.astm.org*).

IEC 62301 is an industry-accepted test procedure for measuring standby mode and off mode energy consumption. The test procedure codified by this final rule references IEC 62301 for performing the standby mode and off mode power measurements for consumer boilers. This test standard is readily available from IEC (*webstore.iec.ch*).

The following standards included in the regulatory text were previously approved for incorporation by reference for the locations in which they appear in this final rule: ANSI/ASHRAE 103–1993, and ASTM D2156–09 (Reapproved 2013).

V. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

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

10 CFR Part 430

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

Signing Authority

This document of the Department of Energy was signed on February 21, 2023, by Francisco Alejandro Moreno,

Acting Assistant Secretary for Energy Efficiency and Renewable 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 22, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends parts 429 and 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

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

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

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

§ 429.134 [Amended]

■ 2. Section 429.134 is amended by:

■ a. In paragraph (h) introductory text, removing the words ''appendix N'' and adding in their place the word ''appendix EE'';

■ b. In paragraph (h)(1)(i)(A), removing the words ''section 6 of appendix N'' and adding in their place the words ''section 6 of appendix EE''; and

■ c. In paragraph (h)(2)(i)(A), removing the words ''appendix N'' and adding in their place the words ''appendix EE''.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

§ 430.2 [Amended]

■ 4. Section 430.2 is amended by removing the definition of ''Outdoor furnace or boiler''.

■ 5. Section 430.3 is amended by:

■ a. In paragraph (g)(11), removing the words ''appendix F'' and adding in their place the words ''appendices F and EE'';

■ b. In paragraph (g)(17), removing the words ''appendix O'' and adding in their place the words ''§ 430.23 and appendices O and EE'';

■ c. Revising paragraph (j) introductory text;

■ d. In paragraph (j)(3), removing the words ''appendix O'' and adding in their place the words ''appendices O and EE''; and

■ e. In paragraph (p)(7), removing the text ''CC, and FF'' and adding in their place ''CC, EE, and FF''.

The revision reads as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(j) *ATSM.* ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959, (877) 909–2786, *www.astm.org.*

* * * * *

■ 6. Section 430.23 is amended by revising paragraph (n) to read as follows:

§ 430.23 Test Procedures for the measurement of energy and water consumption.

* * * * *

(n) *Furnaces.* (1) The estimated annual operating cost for furnaces is the sum of:

(i) The product of the average annual fuel energy consumption, in Btu's per year for gas or oil furnaces or in kilowatt-hours per year for electric furnaces, determined according to section 10.2.2 or 10.3 of appendix N of this subpart, respectively, (for furnaces, excluding low pressure steam or hot water boilers and electric boilers) or section 10.2.2 or 10.3 of appendix EE of this subpart, respectively (for low pressure steam or hot water boilers and electric boilers), and the representative average unit cost in dollars per Btu for gas or oil, or dollars per kilowatt-hour for electric, as appropriate, as provided pursuant to section 323(b)(2) of the Act; plus

(ii) The product of the average annual auxiliary electric energy consumption in kilowatt-hours per year determined according to section 10.2.3 of appendix N of this subpart (for furnaces, excluding low pressure steam or hot water boilers and electric boilers) or section 10.2.3 of appendix EE of this subpart (for low pressure steam or hot water boilers and electric boilers) of this subpart, and the representative average unit cost in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act.

(iii) Round the resulting sum to the nearest dollar per year.

(2) The annual fuel utilization efficiency (AFUE) for furnaces, expressed in percent, is the ratio of the annual fuel output of useful energy delivered to the heated space to the annual fuel energy input to the furnace.

(i) For gas and oil furnaces, determine AFUE according to section 10.1 of appendix N (for furnaces, excluding low pressure steam or hot water boilers and electric boilers) or section 10.1 of appendix EE (for low pressure steam or hot water boilers and electric boilers) of this subpart, as applicable.

(ii) For electric furnaces, excluding electric boilers, determine AFUE in accordance with section 11.1 of ANSI/ASHRAE 103–1993 (incorporated by reference, *see* § 430.3); for electric boilers, determine AFUE in accordance with section 11.1 of ANSI/ASHRAE 103–2017 (incorporated by reference, *see* § 430.3).

(iii) Round the AFUE to one-tenth of a percentage point.

(3) The estimated regional annual operating cost for furnaces is calculated as follows:

(i) When using appendix N of this subpart for furnaces excluding low pressure steam or hot water boilers and electric boilers (see the note at the beginning of appendix N of this subpart),

(A) For gas or oil-fueled furnaces,

$$(E_{FR} \times C_{BTU}) + (E_{AER} \times C_{KWH})$$

Where:

E_{FR} = the regional annual fuel energy consumption in Btu per year, determined according to section 10.7.1 of appendix N of this subpart;

C_{BTU} = the representative average unit cost in dollars per Btu of gas or oil, as provided pursuant to section 323(b)(2) of the Act;

E_{AER} = the regional annual auxiliary electrical energy consumption in kilowatt-hours per year, determined according to section 10.7.2 of appendix N of this subpart; and

C_{KWH} = the representative average unit cost in dollars per kilowatt-hour of electricity, as provided pursuant to section 323(b)(2) of the Act.

(B) For electric furnaces,

$$(E_{ER} \times C_{KWH})$$

Where:

E_{ER} = the regional annual fuel energy consumption in kilowatt-hours per year, determined according to section 10.7.3 of appendix N of this subpart; and

C_{KWH} is as defined in paragraph (n)(3)(i)(A) of this section.

(ii) When using appendix EE of this subpart for low pressure steam or hot water boilers and electric boilers (see the note at the beginning of appendix EE of this subpart),

(A) For gas or oil-fueled boilers,

$$(E_{ER} \times C_{BTU}) + (E_{AER} \times C_{KWH})$$

Where:

E_{FR} = the regional annual fuel energy consumption in Btu per year, determined according to section 10.5.1 of appendix EE of this subpart;

C_{BTU} and C_{KWH} are as defined in paragraph (n)(3)(i)(A) of this section; and

E_{AER} = the regional annual auxiliary electrical energy consumption in kilowatt-hours per year, determined according to section 10.5.2 of appendix EE of this subpart.

(B) For electric boilers,

$$(E_{ER} \times C_{KWH})$$

Where:

E_{ER} = the regional annual fuel energy consumption in kilowatt-hours per year, determined according to section 10.5.3 of appendix EE of this subpart; and

C_{KWH} is as defined in paragraph (n)(3)(i)(A) of this section.

(iii) Round the estimated regional annual operating cost to the nearest dollar per year.

(4) The energy factor for furnaces, expressed in percent, is the ratio of annual fuel output of useful energy delivered to the heated space to the total annual energy input to the furnace determined according to either section 10.6 of appendix N of this subpart (for furnaces, excluding low pressure steam or hot water boilers and electric boilers) or section 10.4 of appendix EE of this subpart (for low pressure steam or hot water boilers and electric boilers), as applicable.

(5) The average standby mode and off mode electrical power consumption for furnaces shall be determined according to section 8.10 of appendix N of this subpart (for furnaces, excluding low pressure steam or hot water boilers and electric boilers) or section 8.9 of appendix EE of this subpart (for low pressure steam or hot water boilers and electric boilers), as applicable. Round the average standby mode and off mode electrical power consumption to the nearest tenth of a watt.

(6) Other useful measures of energy consumption for furnaces shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix N of this subpart (for furnaces, excluding low pressure steam or hot water boilers and electric boilers) or appendix EE of this subpart (for low pressure steam or hot water boilers and electric boilers).

* * * * *

■ 7. Appendix N to subpart B of part 430 is revised to read as follows:

Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Consumer Furnaces Other Than Boilers

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, the entire standards for ASTM D2156R13 and IEC 62301. DOE also incorporated selected provisions of ASHRAE 103–1993.

1. *Scope.* The scope of this appendix is as specified in section 2 of ASHRAE 103–1993 as it pertains to furnaces other than low pressure steam or hot water boilers or to electric boilers. Low pressure steam or hot water boilers and electric boilers are addressed in appendix EE of this subpart.

2. *Definitions.* Definitions include those specified in section 3 of ASHRAE 103–1993 and the following additional and modified definitions.

Active mode means the condition in which the furnace is connected to the power source, and at least one of the burner, electric resistance elements, or any electrical auxiliaries such as blowers, are activated.

Control means a device used to regulate the operation of a piece of equipment and the supply of fuel, electricity, air, or water.

Draft inducer means a fan incorporated in the furnace that either draws or forces air into the combustion chamber.

Gas valve means an automatic or semi-automatic device consisting essentially of a valve and operator that controls the gas supply to the burner(s) during normal operation of an appliance. The operator may be actuated by application of gas pressure on a flexible diaphragm, by electrical means, by mechanical means or by other means.

Installation and operation (I&O) manual means instructions for installing, commissioning, and operating the furnace, which are supplied with the product when shipped by the manufacturer.

Isolated combustion system means a system where a unit is installed within the structure, but isolated from the heated space. A portion of the jacket heat from the unit is lost, and air for ventilation, combustion and draft control comes from outside the heated space.

Multi-position furnace means a furnace that can be installed in more than one airflow configuration (*i.e.,* upflow or horizontal; downflow or horizontal; upflow or downflow; and upflow, or downflow, or horizontal).

Off mode means a mode in which the furnace is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. The existence of an off switch in off position (a disconnected circuit) is included within the classification of off mode.

Off switch means the switch on the furnace that, when activated, results in a measurable change in energy consumption between the standby and off modes.

Oil control valve means an automatically or manually operated device consisting of an oil valve for controlling the fuel supply to a burner to regulate burner input.

Standby mode means any mode in which the furnace is connected to a mains power source and offers one or more of the following space heating functions that may persist:

(a) Activation of other modes (including activation or deactivation of active mode) by remote switch (including thermostat or remote control), internal or external sensors, and/or timer; and

(b) Continuous functions, including information or status displays or sensor-based functions.

Thermal stack damper means a type of stack damper that relies exclusively upon the changes in temperature in the stack gases to open or close the damper.

3. *Classifications.* Classifications are as specified in section 4 of ASHRAE 103–1993 for furnaces.

4. *Requirements.* Requirements are as specified in section 5 of ASHRAE 103–1993 for furnaces.

5. *Instruments.* Instruments must be as specified in section 6 of ASHRAE 103–1993.

6. *Apparatus.* The apparatus used in conjunction with the furnace during the testing must be as specified in section 7 of ASHRAE 103–1993 (except for the excluded sub-sections as enumerated at § 430.3(g)(15)); and as specified in sections 6.1 through 6.5 of this appendix.

6.1 *General.*

(a) Install the furnace in the test room in accordance with the I&O manual, as defined in section 2.6 of this appendix, except that if provisions within this appendix are specified, then the provisions herein drafted and prescribed by DOE govern. If the I&O manual and any additional provisions of this appendix are not sufficient for testing a furnace, the manufacturer must request a waiver from the test procedure pursuant to § 430.27.

(b) If the I&O manual indicates the unit should not be installed with a return duct, then the return (inlet) duct specified in section 7.2.1 of ASHRAE 103–1993 is not required.

(c) Test multi-position furnaces in the least efficient configuration. Testing of multi-position furnaces in other configurations is permitted if energy use or efficiency is represented pursuant to the requirements in 10 CFR part 429.

(d) The apparatuses described in section 6 of this appendix are used in conjunction with the furnace during testing. Each piece of apparatus shall conform to material and construction specifications listed in this appendix and in ASHRAE 103–1993, and the reference standards cited in this appendix and in ASHRAE 103–1993.

(e) Test rooms containing equipment must have suitable facilities for providing the utilities (including but not limited to environmental controls, applicable measurement equipment, and any other technology or tools) necessary for performance of the test and must be able to maintain conditions within the limits specified in section 6 of this appendix.

6.2 *Forced-air central furnaces (direct vent and direct exhaust).*

(a) Units not equipped with a draft hood or draft diverter must be provided with the minimum-length vent configuration recommended in the I&O manual or a 5-ft flue pipe if there is no recommendation provided in the I&O manual (*see* Figure 4 of ASHRAE 103–1993). For a direct exhaust system, insulate the minimum-length vent configuration or the 5-ft flue pipe with insulation having an R-value not less than 7 and an outer layer of aluminum foil. For a direct vent system, *see* section 7.5 of ASHRAE 103–1993 for insulation requirements.

(b) For units with power burners, cover the flue collection box with insulation having an R-value of not less than 7 and an outer layer of aluminum foil before the cool-down and heat-up tests described in sections 9.5 and 9.6 of ASHRAE 103–1993, respectively. However, do not apply the insulation for the jacket loss test (if conducted) described in section 8.6 of ASHRAE 103–1993 or the steady-state test described in section 9.1 of ASHRAE 103–1993.

(c) For power-vented units, insulate the shroud surrounding the blower impeller with insulation having an R-value of not less than 7 and an outer layer of aluminum foil before the cool-down and heat-up tests described in sections 9.5 and 9.6, respectively, of ASHRAE 103–1993. However, do not apply the insulation for the jacket loss test (if conducted) described in section 8.6 of ASHRAE 103–1993 or the steady-state test described in section 9.1 of ASHRAE 103–1993. Do not insulate the blower motor or block the airflow openings that facilitate the cooling of the combustion blower motor or bearings.

6.3 *Downflow furnaces.* Install an internal section of vent pipe the same size as the flue collar for connecting the flue collar to the top of the unit, if not supplied by the manufacturer. However, do not insulate the internal vent pipe during the jacket loss test (if conducted) described in section 8.6 of ASHRAE 103–1993 or the steady-state test described in section 9.1 of ASHRAE 103–1993. Do not insulate the internal vent pipe before the cool-down and heat-up tests described in sections 9.5 and 9.6, respectively, of ASHRAE 103–1993. If the vent pipe is surrounded by a metal jacket, do not insulate the metal jacket. Install a 5-ft test stack of the same cross-sectional area or perimeter as the vent pipe above the top of the furnace. Tape or seal around the junction connecting the vent pipe and the 5-ft test stack. Insulate the 5-ft test stack with insulation having an R-value not less than 7 and an outer layer of aluminum foil. (*See* Figure 3–E of ASHRAE 103–1993.)

6.4 *Units with draft hoods or draft diverters.* Install the stack damper in accordance with the I&O manual. Install 5 feet of stack above the damper.

(a) For units with an integral draft diverter, cover the 5-ft stack with insulation having an R-value of not less than 7 and an outer layer of aluminum foil.

(b) For units with draft hoods, insulate the flue pipe between the outlet of the furnace and the draft hood with insulation having an R-value of not less than 7 and an outer layer of aluminum foil.

(c) For units with integral draft diverters that are mounted in an exposed position (not inside the overall unit cabinet), cover the diverter boxes (excluding any openings through which draft relief air flows) before the beginning of any test (including jacket loss test) with insulation having an R-value of not less than 7 and an outer layer of aluminum foil.

(d) For units equipped with integral draft diverters that are enclosed within the overall unit cabinet, insulate the draft diverter box with insulation as described in section 6.4.c before the cool-down and heat-up tests described in sections 9.5 and 9.6, respectively, of ASHRAE 103–1993. However, do not apply the insulation for the jacket loss test (if conducted) described in section 8.6 of ASHRAE 103–1993 or the steady-state test described in section 9.1 of ASHRAE 103–1993.

6.5 *Condensate collection.* Attach condensate drain lines to the unit as specified in the I&O manual. Maintain a continuous downward slope of drain lines from the unit. Additional precautions (such as eliminating any line configuration or position that would otherwise restrict or block the flow of condensate or checking to ensure a proper connection with condensate drain spout that allows for unobstructed flow) must be taken to facilitate uninterrupted flow of condensate during the test. Collection containers must be glass or polished stainless steel to facilitate removal of interior deposits. The collection container must have a vent opening to the atmosphere.

7. *Testing conditions.* The testing conditions must be as specified in section 8 of ASHRAE 103–1993 (except for the excluded sub-sections as enumerated at § 430.3(g)(15)); and as specified in sections 7.1 to 7.9 of this appendix, respectively.

7.1 *Fuel supply, gas.* In conducting the tests specified herein, gases with characteristics as shown in Table 1 of ASHRAE 103–1993 shall be used. Maintain the gas supply, ahead of all controls for a furnace, at a test pressure between the normal and increased values shown in Table 1 of ASHRAE 103–1993. Maintain the regulator outlet pressure at a level approximating that recommended in the I&O manual, as defined in section 2.6 of this appendix, or, in the absence of such recommendation, to the nominal regulator settings used when the product is shipped by the manufacturer. Use a gas having a specific gravity as shown in Table 1 of ASHRAE 103–1993 and with a higher heating value within ±5% of the higher heating value shown in Table 1 of ASHRAE 103–1993. Determine the actual higher heating value in Btu per standard cubic foot for the gas to be used in the test within an error no greater than 1%.

7.2 *Gas burner.* Adjust the burners of gas-fired furnaces to their maximum Btu input ratings at the normal test pressure specified by section 7.1 of this appendix. Correct the burner input rate to reflect gas characteristics at a temperature of 60 °F and atmospheric pressure of 30 in of Hg and adjust down to within ±2 percent of the hourly Btu nameplate input rating specified by the manufacturer as measured during the steady-state performance test in section 8 of this appendix. Set the primary air shutters in accordance with the I&O manual to give a good flame at this condition. If, however, the setting results in the deposit of carbon on the burners during any test specified herein, the tester shall adjust the shutters and burners until no more carbon is

deposited and shall perform the tests again with the new settings (*see* Figure 9 of ASHRAE 103–1993). After the steady-state performance test has been started, do not make additional adjustments to the burners during the required series of performance tests specified in section 9 of ASHRAE 103–1993. If a vent-limiting means is provided on a gas pressure regulator, keep it in place during all tests.

7.3 *Modulating gas burner adjustment at reduced input rate.* For gas-fired furnaces equipped with modulating-type controls, adjust the controls to operate the unit at the nameplate minimum input rate. If the modulating control is of a non-automatic type, adjust the control to the setting recommended in the I&O manual. In the absence of such recommendation, the midpoint setting of the non-automatic control shall be used as the setting for determining the reduced fuel input rate. Start the furnace by turning the safety control valve to the ''ON'' position.

7.4 *Oil burner.* Adjust the burners of oil-fired furnaces to give a CO_2 reading specified in the I&O manual and an hourly Btu input during the steady-state performance test described in section 8 of this appendix. Ensure the hourly BTU input is within ±2% of the normal hourly Btu input rating as specified in the I&O manual. Smoke in the flue may not exceed a No. 1 smoke during the steady-state performance test as measured by the procedure in ASTM D2156R13). Maintain the average draft over the fire and in the flue during the steady-state performance test at the value specified in the I&O manual. Do not allow draft fluctuations exceeding 0.005 in. water. Do not make additional adjustments to the burner during the required series of performance tests. The instruments and measuring apparatus for this test are described in section 6 of this appendix and shown in Figure 8 of ASHRAE 103–1993.

7.5 *Temperature Rise Targets.* Adjust air throughputs to achieve a temperature rise that is the higher of a and b, below, unless c applies. A tolerance of ±2 °F is permitted.

(a) 15 °F less than the nameplate maximum temperature rise or

(b) 15 °F higher than the minimum temperature rise specified in the I&O manual.

(c) A furnace with a non-adjustable air temperature rise range and an automatically controlled airflow that does not permit a temperature rise range of 30 °F or more must be tested at the midpoint of the rise range.

7.6 *Temperature Rise Adjustments.* Establish the temperature rise specified in section 7.5 of this appendix by adjusting the circulating airflow. This adjustment must be accomplished by symmetrically restricting the outlet air duct and varying blower speed selection to obtain the desired temperature rise and minimum external static pressure, as specified in Table 4 of ASHRAE 103–1993. If the required temperature rise cannot be obtained at the minimum specified external static pressure by adjusting blower speed selection and duct outlet restriction, then the following applies.

(a) If the resultant temperature rise is less than the required temperature rise, vary the blower speed by gradually adjusting the blower voltage so as to maintain the minimum external static pressure listed in Table 4 of ASHRAE 103–1993. The airflow restrictions shall then remain unchanged. If static pressure must be varied to prevent unstable blower operation, then increase the static pressure until blower operation is stabilized, except that the static pressure must not exceed the maximum external static pressure as specified by the manufacturer in the I&O manual.

(b) If the resultant temperature rise is greater than the required temperature rise, then the unit can be tested at a higher temperature rise value, but one not greater than nameplate maximum temperature rise. In order not to exceed the maximum temperature rise, the speed of a direct-driven blower may be increased by increasing the circulating air blower motor voltage.

7.7 *Measurement of jacket surface temperature.* Divide the jacket of the furnace into 6-inch squares when practical, and otherwise into 36-square-inch regions comprising 4-inch by 9-inch or 3-inch by 12-inch sections, and determine the surface temperature at the center of each square or section with a surface thermocouple. Record the surface temperature of the 36-square-inch areas in groups where the temperature differential of the 36-square-inch areas is less than 10 °F for temperature up to 100 °F above room temperature, and less than 20 °F for temperatures more than 100 °F above room temperature. For forced-air central furnaces, the circulating air blower compartment is considered as part of the duct system, and no surface temperature measurement of the blower compartment needs to be recorded for the purpose of this test. For downflow furnaces, measure all cabinet surface temperatures of the heat exchanger and combustion section, including the bottom around the outlet duct and the burner door, using the 36-square-inch thermocouple grid. The cabinet surface temperatures around the blower section do not need to be measured (*See* Figure 3–E of ASHRAE 103–1993).

7.8 *Installation of vent system.* Keep the vent or air intake system supplied by the manufacturer in place during all tests. Test units intended for installation with a variety of vent pipe lengths with the minimum vent length as specified in the I&O manual, or a 5-ft. flue pipe if there are no recommendations in the I&O manual. Do not connect a furnace employing a direct vent system to a chimney or induced-draft source. Vent combustion products solely by using the venting incorporated in the furnace and the vent or air intake system supplied by the manufacturer. For units that are not designed to significantly preheat the incoming air, see section 7.4 of this appendix and Figure 4a or 4b of ASHRAE 103–1993. For units that do significantly preheat the incoming air, see Figure 4c or 4d of ASHRAE 103–1993.

7.9 *Additional optional method of testing for determining D_P and D_F for furnaces.* On units whose design is such that there is no measurable airflow through the combustion chamber and heat exchanger when the burner(s) is (are) off as determined by the optional test procedure in section 7.9.1 of this appendix, D_F and D_P may be set equal to 0.05.

7.9.1 *Optional test method for indicating the absence of flow through the heat exchanger.* Manufacturers may use the following test protocol to determine whether air flows through the combustion chamber and heat exchanger when the burner(s) is (are) off. The minimum default draft factor may be used only for units determined pursuant to this protocol to have no airflow through the combustion chamber and heat exchanger.

7.9.1.1 *Test apparatus.* Use a smoke stick that produces smoke that is easily visible and has a density less than or approximately equal to air. Use a smoke stick that produces smoke that is non-toxic to the test personnel and produces gas that is unreactive with the environment in the test chamber.

7.9.1.2 *Test conditions.* Minimize all air currents and drafts in the test chamber, including turning off ventilation if the test chamber is mechanically ventilated. Wait at least two minutes following the termination of the furnace on-cycle before beginning the optional test method for indicating the absence of flow through the heat exchanger.

7.9.1.3 *Location of the test apparatus.* After all air currents and drafts in the test chamber have been eliminated or minimized, position the

smoke stick based on the following equipment configuration:

(a) For horizontal combustion air intakes, approximately 4 inches from the vertical plane at the termination of the intake vent and 4 inches below the bottom edge of the combustion air intake; or

(b) for vertical combustion air intakes, approximately 4 inches horizontal from vent perimeter at the termination of the intake vent and 4 inches down (parallel to the vertical axis of the vent).

7.9.1.4 *Duration of test.* Establish the presence of smoke from the smoke stick and then monitor the direction of the smoke flow for no less than 30 seconds.

7.9.1.5 *Test results.* During visual assessment, determine whether there is any draw of smoke into the combustion air intake vent.

(a) If absolutely no smoke is drawn into the combustion air intake, the furnace meets the requirements to allow use of the minimum default draft factor pursuant to section 7.9 of this appendix.

(b) If there is any smoke drawn into the intake, proceed with the methods of testing as prescribed in section 8.8 of ASHRAE 103–1993.

8. *Test procedure.* Conduct testing and measurements as specified in section 9 of ASHRAE 103–1993 (except for the excluded sub-sections as enumerated at § 430.3(g)(15)); and as specified in sections 8.1 through 8.10 of this appendix. Section 8.4 of this appendix may be used in lieu of section 9.2 of ASHRAE 103–1993.

8.1 *Fuel input.* For gas units, measure and record the steady-state gas input rate in Btu/hr, including pilot gas, corrected to standard conditions of 60 °F and 30 in. Hg. Use measured values of gas temperature and pressure at the meter and barometric pressure to correct the metered gas flow rate to the above standard conditions. For oil units, measure and record the steady-state fuel input rate.

8.2 *Electrical input.* During the steady-state test, perform a single measurement of all of the electrical power involved in burner operation (PE), including energizing the ignition system, controls, gas valve or oil control valve, and draft inducer, if applicable.

During the steady-state test, perform a single measurement of the electrical power to the circulating air blower (BE).

8.3 *Input to interrupted ignition device.* For burners equipped with an interrupted ignition device, record the nameplate electric power used by the ignition device, PE_{IG}, or record that PE_{IG} = 0.4 kW if no nameplate power input is provided. Record the nameplate ignition device on-time interval, t_{IG}, or, if the nameplate does not provide the ignition device on-time interval, measure the on-time interval with a stopwatch at the beginning of the test, starting when the burner is turned on. Set $t_{IG} = 0$ and $PE_{IG} = 0$ if the device on-time interval is less than or equal to 5 seconds after the burner is on.

8.4 *Optional test procedures for condensing furnaces, measurement of condensate during the establishment of steady-state conditions.* For units with step-modulating or two-stage controls, conduct the test at both the maximum and reduced inputs. In lieu of collecting the condensate immediately after the steady state conditions have been reached as required by section 9.2 of ASHRAE 103–1993, condensate may be collected during the establishment of steady state conditions as defined by section 9.1.2.1 of ASHRAE 103–1993. Perform condensate collection for at least 30 minutes. Measure condensate mass immediately at the end of the collection period to prevent evaporation loss from the sample. Record fuel input for the 30-minute condensate collection test period. Observe and record fuel higher heating value (HHV), temperature, and pressures necessary for determining fuel energy input ($Q_{c,ss}$). Measure the fuel quantity and HHV with errors no greater than 1%. The humidity for the room air shall at no time exceed 80%. Determine the mass of condensate for the establishment of steady state conditions ($M_{c,ss}$) in pounds by subtracting the tare container weight from the total container and condensate weight measured at the end of the 30-minute condensate collection test period.

8.5 *Cool-down test for gas- and oil-fueled gravity and forced-air central furnaces without stack dampers.* Turn off the main burner after completing steady-state testing, and measure the flue gas temperature by means of the thermocouple grid described in section 7.6 of ASHRAE 103–1993 at 1.5 minutes ($T_{F,OFF}(t_3)$) and 9 minutes ($T_{F,OFF}(t_4)$) after shutting off the burner. When taking these temperature readings, the integral draft diverter must remain blocked and insulated, and the stack restriction must remain in place. On atmospheric systems with an integral draft diverter or draft hood and equipped with either an electromechanical inlet damper or an electromechanical flue damper that closes within 10 seconds after the burner shuts off to restrict the flow through the heat exchanger in the off-cycle, bypass or adjust the control for the electromechanical damper so that the damper remains open during the cool-down test.

For furnaces that employ post-purge, measure the length of the post-purge period with a stopwatch. Record the time from burner ''OFF'' to combustion blower ''OFF'' (electrically de-energized) as t_P. If the measured t_P is less than or equal to 30 seconds, set t_P at 0 and conduct the cool-down test as if there is no post-purge. If t_P is prescribed by the I&O manual or measured to be greater than 180 seconds, stop the combustion blower at 180 seconds and use that value for t_P. Measure the flue gas temperature by means of the thermocouple grid described in section 7.6 of ASHRAE 103–1993 at the end of the post-purge period, t_P($T_{F,OFF}$ (t_P)), and at the time (1.5 + t_P) minutes ($T_{F,OFF}(t_3)$) and (9.0 + t_P) minutes ($T_{F,OFF}(t_4)$) after the main burner shuts off.

8.6 *Cool-down test for gas- and oil-fueled gravity and forced-air central furnaces without stack dampers and with adjustable fan control.* For a furnace with adjustable fan control, measure the time delay between burner shutdown and blower shutdown, t^+. This time delay, t^+, will be 3.0 minutes for non-condensing furnaces or 1.5 minutes for condensing furnaces or until the supply air temperature drops to a value of 40 °F above the inlet air temperature, whichever results in the longest fan on-time. For a furnace without adjustable fan control or with the type of adjustable fan control whose range of adjustment does not allow for the time delay, t^+, specified above, bypass the fan control and manually control the fan to allow for the appropriate delay time as specified in section 9.5.1.2 of ASHRAE 103–1993. For a furnace that employs a single motor to drive both the power burner and the indoor air circulating blower, the power burner and indoor air circulating blower must be stopped at the same time.

8.7 [Reserved]

8.8 *Calculation options.* The rate of the flue gas mass flow through the furnace and the factors D_P, D_F, and D_S are calculated by the equations in sections 11.6.1, 11.6.2, 11.6.3, 11.6.4, 11.7.1, and 11.7.2 of ASHRAE 103–1993. On units whose design is such that there is no measurable airflow through the combustion chamber and heat exchanger when the burner(s) is (are) off (as determined by the optional test procedure in section 7.9 of this appendix), D_F and D_P may be set equal to 0.05.

8.9 *Optional test procedures for condensing furnaces that have no off-period flue losses.* For units that have applied the test method in section 7.9 of this appendix to determine that no

measurable airflow exists through the combustion chamber and heat exchanger during the burner off-period and having post-purge periods of less than 5 seconds, the cool-down and heat-up tests specified in sections 9.5 and 9.6 of ASHRAE 103–1993 may be omitted. In lieu of conducting the cool-down and heat-up tests, the tester may use the losses determined during the steady-state test described in section 9.1 of ASHRAE 103–1993 when calculating heating seasonal efficiency, $Effy_{HS}$.

8.10 *Measurement of electrical standby and off mode power.*

8.10.1 *Standby power measurement.* With all electrical auxiliaries of the furnace not activated, measure the standby power ($P_{W,SB}$) in accordance with the procedures in IEC 62301, except that section 8.5, *Room Ambient Temperature,* of ASHRAE 103–1993 and the voltage provision of section 8.2.1.4, *Electrical Supply,* of ASHRAE 103–1993 shall apply in lieu of the corresponding provisions of IEC 62301 at section 4.2, *Test room,* and the voltage specification of section 4.3, *Power supply.* Frequency shall be 60Hz. Clarifying further, IEC 62301 section 4.4, *Power measurement instruments,* and Section 5, *Measurements,* apply in lieu of ASHRAE 103–1993 section 6.10, *Energy Flow Rate.* Measure the wattage so that all possible standby mode wattage for the entire appliance is recorded, not just the standby mode wattage of a single auxiliary. Round the recorded standby power ($P_{W,SB}$) to the second decimal place, except for loads greater than or equal to 10W, which must be recorded to at least three significant figures.

8.10.2 *Off mode power measurement.* If the unit is equipped with an off switch or there is an expected difference between off mode power and standby mode power, measure off mode power ($P_{W,OFF}$) in accordance with the standby power procedures in IEC 62301, except that section 8.5, *Room Ambient Temperature,* of ASHRAE 103–1993 and the voltage provision of section 8.2.1.4, *Electrical Supply,* of ASHRAE 103–1993 shall apply in lieu of the corresponding provisions of IEC 62301 at section 4.2, *Test room,* and the voltage specification of section 4.3, *Power supply.* Frequency shall be 60Hz. Clarifying further, IEC 62301 section 4.4, *Power measurement instruments,* and section 5, *Measurements,* apply for this measurement in lieu of ASHRAE 103–1993 section 6.10, *Energy Flow Rate.* Measure the wattage so that all possible off mode wattage for the entire appliance is recorded, not just the off mode wattage of a single auxiliary. If there is no expected difference in off mode power and standby mode power, let $P_{W,OFF} = P_{W,SB}$, in which case no separate measurement of off mode power is necessary. Round the recorded off mode power ($P_{W,OFF}$) to the second decimal place, except for loads greater than or equal to 10W, in which case round the recorded value to at least three significant figures.

9. *Nomenclature.* Nomenclature includes the nomenclature specified in section 10 of ASHRAE 103–1993 and the following additional variables:

Eff_{motor} = Efficiency of power burner motor

PE_{IG} = Electrical power to the interrupted ignition device, kW

$R_{T,a} = R_{T,F}$ if flue gas is measured

$= R_{T,S}$ if stack gas is measured

$R_{T,F}$ = Ratio of combustion air mass flow rate to stoichiometric air mass flow rate

$R_{T,S}$ = Ratio of the sum of combustion air and relief air mass flow rate to stoichiometric air mass flow rate

t_{IG} = Electrical interrupted ignition device on-time, min.

$T_{a,SS,X} = T_{F,SS,X}$ if flue gas temperature is measured, °F

$= T_{S,SS,X}$ if stack gas temperature is measured, °F

y_{IG} = Ratio of electrical interrupted ignition device on-time to average burner on-time

y_P = Ratio of power burner combustion blower on-time to average burner on-time

E_{SO} = Average annual electric standby mode and off mode energy consumption, in kilowatt-hours

$P_{W,OFF}$ = Furnace off mode power, in watts

$P_{W,SB}$ = Furnace standby mode power, in watts

10. *Calculation of derived results from test measurements.* Perform calculations as specified in section 11 of ASHRAE 103–1993 (except for the excluded sub-sections as enumerated at § 430.3(g)(15)); and as specified in sections 10.1 through 10.11 and Figure 1 of this appendix.

10.1 *Annual fuel utilization efficiency.* The annual fuel utilization efficiency (AFUE) is as defined in sections 11.2.12 (non-condensing systems), 11.3.12 (condensing systems), 11.4.12 (non-condensing modulating systems) and 11.5.12 (condensing modulating systems) of ASHRAE 103–1993, except for the definition for the term $Effy_{HS}$ in the defining equation for AFUE. $Effy_{HS}$ is defined as:

$Effy_{HS}$ = heating seasonal efficiency as defined in sections 11.2.11 (non-condensing systems), 11.3.11 (condensing systems), 11.4.11 (non-condensing modulating systems) and 11.5.11 (condensing modulating systems) of ASHRAE 103–1993, except that for condensing modulating systems sections 11.5.11.1 and 11.5.11.2 are replaced by sections 10.2 and 10.3 of this appendix. $Effy_{HS}$ is based on the assumptions that all weatherized warm air furnaces are located outdoors and that non-weatherized warm air furnaces are installed as isolated combustion systems.

10.2 *Part-load efficiency at reduced fuel input rate.* If the option in section 8.9 of this appendix is not employed, calculate the part-load efficiency at the reduced fuel input rate, $Effy_{U,R,}$ for condensing furnaces equipped with either step-modulating or two-stage controls, expressed as a percent and defined as:

$$Effy_{U,H} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right](L_{S,ON} + L_{S,OFF} + L_{I,ON} + L_{I,OFF})$$

If the option in section 8.9 of this appendix is employed, calculate $\underline{Effy}_{U,R}$ as follows:

$$Effy_{U,H} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right](C_S)(L_{S,SS})$$

Where:

$L_{L,A}$ = value as defined in section 11.2.7 of ASHRAE 103–1993,

L_G = value as defined in section 11.3.11.1 of ASHRAE 103–1993, at reduced input rate,

L_C = value as defined in section 11.3.11.2 of ASHRAE 103–1993 at reduced input rate,

L_J = value as defined in section 11.4.8.1.1 of ASHRAE 103–1993 at maximum input rate,

t_{ON} = value as defined in section 11.4.9.11 of ASHRAE 103–1993,

Q_P = pilot fuel input rate determined in accordance with section 9.2 of ASHRAE 103–1993 in Btu/h,

Q_{IN} = value as defined in section 11.4.8.1.1 of ASHRAE 103–1993,

t_{OFF} = value as defined in section 11.4.9.12 of ASHRAE 103–1993 at reduced input rate,

$L_{S,ON}$ = value as defined in section 11.4.10.5 of ASHRAE 103–1993 at reduced input rate,

$L_{S,OFF}$ = value as defined in section 11.4.10.6 of ASHRAE 103–1993 at reduced input rate,

$L_{I,ON}$ = value as defined in section 11.4.10.7 of ASHRAE 103–1993 at reduced input rate,

$L_{I,OFF}$ = value as defined in section 11.4.10.8 of ASHRAE 103–1993 at reduced input rate,

C_J = jacket loss factor and equal to:

= 0.0 for furnaces intended to be installed indoors

= 1.7 for furnaces intended to be installed as isolated combustion systems

= 3.3 for furnaces intended to be installed outdoors

$L_{S,SS}$ = value as defined in section 11.4.6 of ASHRAE 103–1993 at reduced input rate,

C_S = value as defined in section 11.3.10.1 of ASHRAE 103–1993 at reduced input rate.

10.3 *Part-Load Efficiency at Maximum Fuel Input Rate.* If the option in section 8.9 of this appendix is not employed, calculate the part-load efficiency at maximum fuel input rate, $Effy_{U,H}$, for condensing furnaces equipped with two-stage controls, expressed as a percent and defined as:

$$Effy_{U,R} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right](L_{S,ON} + L_{S,OFF} + L_{I,ON} + L_{I,OFF})$$

If the option in section 8.9 of this appendix is employed, calculate $Effy_{U,H}$ as follows:

$$Effy_{U,R} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right](C_S)(L_{S,SS})$$

Where:

$L_{L,A}$ = value as defined in section 11.2.7 of ASHRAE 103–1993,

L_G = value as defined in section 11.3.11.1 of ASHRAE 103–1993 at maximum input rate,

L_C = value as defined in section 11.3.11.2 of ASHRAE 103–1993 at maximum input rate,

L_J = value as defined in section 11.4.8.1.1 of ASHRAE 103–1993 at maximum input rate,

t_{ON} = value as defined in section 11.4.9.11 of ASHRAE 103–1993,

Q_P = pilot fuel input rate determined in accordance with section 9.2 of ASHRAE 103–1993 in Btu/h,

Q_{IN} = value as defined in section 11.4.8.1.1 of ASHRAE 103–1993,

t_{OFF} = value as defined in section 11.4.9.12 of ASHRAE 103–1993 at maximum input rate,

$L_{S,ON}$ = value as defined in section 11.4.10.5 of ASHRAE 103–1993 at maximum input rate,

$L_{S,OFF}$ = value as defined in section 11.4.10.6 of ASHRAE 103–1993 at maximum input rate,

$L_{I,ON}$ = value as defined in section 11.4.10.7 of ASHRAE 103–1993 at maximum input rate,

$L_{I,OFF}$ = value as defined in section 11.4.10.8 of ASHRAE 103–1993 at maximum input rate,

C_J = value as defined in section 10.2 of this appendix,

$L_{S,SS}$ = value as defined in section 11.4.6 of ASHRAE 103–1993 at maximum input rate,

C_S = value as defined in section 11.4.10.1 of ASHRAE 103–1993 at maximum input rate.

10.4 *National average burner operating hours, average annual fuel energy consumption, and average annual auxiliary electrical energy consumption for gas or oil furnaces.*

10.4.1 *National average number of burner operating hours.* For furnaces equipped with single-stage controls, the national average number of burner operating hours is defined as:

$$BOH_{SS} = 2{,}080\ (0.77)\ (A)\ DHR - 2{,}080\ (B)$$

Where:

2,080 = national average heating load hours

0.77 = adjustment factor to adjust the calculated design heating requirement and heating load hours to the actual heating load experienced by the heating system

A = 100,000/[341,200 (y_P PE + y_{IG} PE_{IG} + y BE) + (Q_{IN} − Q_P) $Effy_{HS}$], for forced draft unit, indoors

= 100,000/[341,200 (y_P PE Eff_{motor} + y_{IG} PE_{IG} + y BE) + (Q_{IN} − Q_P) $Effy_{HS}$], for forced draft unit, isolated combustion system,

= 100,000/[341,200 (y_P PE (1 − Eff_{motor}) + y_{IG} PE_{IG} + y BE) + (Q_{IN} − Q_P) $Effy_{HS}$], for induced draft unit, indoors, and

= 100,000/[341,200 (y_{IG} PE_{IG} + y BE) + (Q_{IN} − Q_P) $Effy_{HS}$], for induced draft unit, isolated combustion system.

DHR = typical design heating requirements as listed in Table 8 (in kBtu/h) of ASHRAE 103–1993, using the proper value of Q_{OUT} defined in section 11.2.8.1 of ASHRAE 103–1993.

B = 2 Q_P ($Effy_{HS}$) (A)/100,000

Where:

Eff_{motor} = nameplate power burner motor efficiency provided by the manufacturer,

= 0.50, an assumed default power burner efficiency if not provided by the manufacturer.

100,000 = factor that accounts for percent and kBtu

y_P = ratio of induced or forced draft blower on-time to average burner on-time, as follows:

1 for units without post-purge;

1 + (t_P/3.87) for single stage furnaces with post purge; or

1 + (t_P/10) for two-stage and step modulating furnaces with post purge.

PE = all electrical power related to burner operation at full load steady-state operation, including electrical ignition device if energized, controls, gas valve or oil control valve, and draft inducer, as determined in section 8.2 of this appendix.

y_{IG} = ratio of burner interrupted ignition device on-time to average burner on-time, as follows:

0 for burners not equipped with interrupted ignition device;

(t_{IG}/3.87) for single-stage furnaces; or

(t_{IG}/10) for two-stage and step modulating furnaces;

PE_{IG} = electrical input rate to the interrupted ignition device on burner (if employed), as defined in section 8.3 of this appendix

y = ratio of blower on-time to average burner on-time, as follows:

1 for furnaces without fan delay;

1 + ($t^+ - t^-$)/3.87 for single-stage furnaces with fan delay; or

1 + ($t^+ - t^-$)/10 for two-stage and step modulating furnaces with fan delay.

BE = circulating air fan electrical energy input rate at full-load steady-state operation as defined in section 8.2 of this appendix.

t_P = post-purge time as defined in section 8.5 of this appendix

= 0 if t_P is equal to or less than 30 seconds

t_{IG} = on-time of the burner interrupted ignition device, as defined in section 8.3 of this appendix

Q_{IN} = as defined in section 11.2.8.1 of ASHRAE 103–1993

Q_P = as defined in section 11.2.11 of ASHRAE 103–1993

$Effy_{HS}$ = as defined in section 11.2.11 (non-condensing systems) or section 11.3.11.3 (condensing systems) of ASHRAE 103–1993, percent, and calculated on the basis of:

isolated combustion system installation, for non-weatherized warm air furnaces; or outdoor installation, for furnaces that are weatherized.

2 = ratio of the average length of the heating season in hours to the average heating load hours

t^+ = delay time between burner shutoff and the blower shutoff measured as defined in section 9.5.1.2 of ASHRAE 103–1993

t^- = as defined in section 9.6.1 of ASHRAE 103–1993

10.4.1.1 For furnaces equipped with two stage or step modulating controls the average annual energy used during the heating season, E_M, is defined as:

$$E_M = (Q_{IN} - Q_P)\ BOH_{SS} + (8{,}760 - 4{,}600)\ Q_P$$

Where:

Q_{IN} = as defined in section 11.4.8.1.1 of ASHRAE 103–1993

Q_P = as defined in section 11.4.12 of ASHRAE 103–1993

BOH_{SS} = as defined in section 10.4.1 of this appendix, in which the weighted $Effy_{HS}$ as defined in section 11.4.11.3 or 11.5.11.3 of ASHRAE 103–1993 is used for calculating the values of A and B, the term DHR is based on the value of Q_{OUT} defined in section 11.4.8.1.1 or 11.5.8.1.1 of ASHRAE 103–1993, and the term (y_PPE + $y_{IG}$$PE_{IG}$ + yBE) in the factor A is increased by the factor R, which is defined as:

R = 2.3 for two stage controls

= 2.3 for step modulating controls when the ratio of minimum-to-maximum output is greater than or equal to 0.5

= 3.0 for step modulating controls when the ratio of minimum-to-maximum output is less than 0.5

A = 100,000/[341,200 (y_P PE + y_{IG} PE_{IG} + y BE) R + ($Q_{IN} - Q_P$) $Effy_{HS}$], for forced draft unit, indoors

= 100,000/[341,200 (y_P PE Eff_{motor} + y_{IG} PE_{IG} + y BE) R + ($Q_{IN} - Q_P$) $Effy_{HS}$], for forced draft unit, isolated combustion system,

= 100,000/[341,200 (y_P PE (1 − Eff_{motor}) + y_{IG} PE_{IG} + y BE) R + ($Q_{IN} - Q_P$) $Effy_{HS}$], for induced draft unit, indoors, and

= 100,000/[341,200 (y_{IG} PE_{IG} + y BE) R + ($Q_{IN} - Q_P$) $Effy_{HS}$], for induced draft unit, isolated combustion system.

Where:

Eff_{motor} = nameplate power burner motor efficiency provided by the manufacturer,

= 0.50, an assumed default power burner efficiency if not provided by the manufacturer.

$Effy_{HS}$ = as defined in section 11.4.11.3 or 11.5.11.3 of ASHRAE 103–1993, and calculated on the basis of:

isolated combustion system installation, for non-weatherized warm air furnaces; or outdoor installation, for furnaces that are weatherized.

8,760 = total number of hours per year

4,600 = as defined in section 11.4.12 of ASHRAE 103–1993

10.4.1.2 For furnaces equipped with two-stage or step-modulating controls, the national average number of burner operating hours at the reduced operating mode (BOH_R) is defined as:

$$BOH_R = X_R\ E_M/Q_{IN,R}$$

Where:

X_R = as defined in section 11.4.8.7 of ASHRAE 103–1993

E_M = as defined in section 10.4.1.1 of this appendix

$Q_{IN,R}$ = as defined in section 11.4.8.1.2 of ASHRAE 103–1993

10.4.1.3 For furnaces equipped with two-stage controls, the national average number of burner operating hours at the maximum operating mode (BOH_H) is defined as:

$$BOH_H = X_H\ E_M/Q_{IN}$$

Where:

X_H = as defined in section 11.4.8.6 of ASHRAE 103–1993

E_M = as defined in section 10.4.1.1 of this appendix

Q_{IN} = as defined in section 11.4.8.1.1 of ASHRAE 103–1993

10.4.1.4 For furnaces equipped with step-modulating controls, the national average number of burner operating hours at the modulating operating mode (BOH_M) is defined as:

$$BOH_M = X_H\ E_M/Q_{IN,M}$$

Where:

X_H = as defined in section 11.4.8.6 of ASHRAE 103–1993

E_M = as defined in section 10.4.1.1 of this appendix

$Q_{IN,M} = Q_{OUT,M}/(Effy_{SS,M}/100)$

$Q_{OUT,M}$ = as defined in section 11.4.8.10 or 11.5.8.10 of ASHRAE 103–1993, as appropriate
$Effy_{SS,M}$ = as defined in section 11.4.8.8 or 11.5.8.8 of ASHRAE 103–1993, as appropriate, in percent
100 = factor that accounts for percent

10.4.2 *Average annual fuel energy consumption for gas or oil fueled furnaces.* For furnaces equipped with single-stage controls, the average annual fuel energy consumption (E_F) is expressed in Btu per year and defined as:

$$E_F = BOH_{SS} (Q_{IN} - Q_P) + 8{,}760\ Q_P$$

Where:
BOH_{SS} = as defined in section 10.4.1 of this appendix
Q_{IN} = as defined in section 11.2.8.1 of ASHRAE 103–1993
Q_P = as defined in section 11.2.11 of ASHRAE 103–1993
8,760 = as defined in section 10.4.1.1 of this appendix

10.4.2.1 For furnaces equipped with either two-stage or step modulating controls, E_F is defined as:

$$E_F = E_M + 4{,}600\ Q_P$$

Where:
E_M = as defined in section 10.4.1.1 of this appendix
4,600 = as defined in section 11.4.12 of ASHRAE 103–1993
Q_P = as defined in section 11.2.11 of ASHRAE 103–1993

10.4.2.2 [Reserved]

10.4.3 *Average annual auxiliary electrical energy consumption for gas or oil-fueled furnaces.* For furnaces equipped with single-stage controls, the average annual auxiliary electrical consumption (E_{AE}) is expressed in kilowatt-hours and defined as:

$$E_{AE} = BOH_{SS} (y_P\ PE + y_{IG}\ PE_{IG} + yBE) + E_{SO}$$

Where:
BOH_{SS} = as defined in section 10.4.1 of this appendix
y_P = as defined in section 10.4.1 of this appendix
PE = as defined in section 10.4.1 of this appendix
y_{IG} = as defined in section 10.4.1 of this appendix
PE_{IG} = as defined in section 10.4.1 of this appendix
y = as defined in section 10.4.1 of this appendix
BE = as defined in section 10.4.1 of this appendix
E_{SO} = as defined in section 10.11 of this appendix

10.4.3.1 For furnaces equipped with two-stage controls, E_{AE} is defined as:

$$E_{AE} = BOH_R (y_P\ PE_R + y_{IG}\ PE_{IG} + yBE_R) + BOH_H (y_P\ PE_H + y_{IG}\ PE_{IG} + y\ BE_H) + E_{SO}$$

Where:
BOH_R = as defined in section 10.4.1.2 of this appendix
y_P = as defined in section 10.4.1 of this appendix
PE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
y_{IG} = as defined in section 10.4.1 of this appendix
PE_{IG} = as defined in section 10.4.1 of this appendix
y = as defined in section 10.4.1 of this appendix
BE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
BOH_H = as defined in section 10.4.1.3 of this appendix
PE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
BE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
E_{SO} = as defined in section 10.11 of this appendix

10.4.3.2 For furnaces equipped with step-modulating controls, E_{AE} is defined as:

$$E_{AE} = BOH_R (y_P\ PE_R + y_{IG}\ PE_{IG} + y\ BE_R) + BOH_M (y_P\ PE_H + y_{IG}\ PE_{IG} + y\ BE_H) + E_{SO}$$

Where:
BOH_R = as defined in section 10.4.1.2 of this appendix
y_P = as defined in section 10.4.1 of this appendix
PE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
y_{IG} = as defined in section 10.4.1 of this appendix
PE_{IG} = as defined in section 10.4.1 of this appendix
y = as defined in section 10.4.1 of this appendix
BE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
BOH_M = as defined in 10.4.1.4 of this appendix
PE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
BE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
E_{SO} = as defined in section 10.11 of this appendix

10.5 *Average annual electric energy consumption for electric furnaces.* For electric furnaces, the average annual electrical energy consumption (E_E) is expressed in kilowatt-hours and defined as:

$$E_E = 100\ (2{,}080)\ (0.77)\ DHR/(3.412\ AFUE) + E_{SO}$$

Where:
100 = to express a percent as a decimal
2,080 = as defined in section 10.4.1 of this appendix
0.77 = as defined in section 10.4.1 of this appendix
DHR = as defined in section 10.4.1 of this appendix
3.412 = conversion factor from watt-hours to Btu
AFUE = as defined in section 11.1 of ASHRAE 103–1993, in percent, and calculated on the basis of:
isolated combustion system installation, for non-weatherized warm air furnaces; or
outdoor installation, for furnaces that are weatherized.
E_{SO} = as defined in section 10.11 of this appendix.

10.6 *Energy factor.*

10.6.1 *Energy factor for gas or oil furnaces.* Calculate the energy factor, EF, for gas or oil furnaces defined as, in percent:

$$EF = (E_F - 4{,}600\ (Q_P))(Effy_{HS})/(E_F + 3{,}412\ (E_{AE}))$$

Where:
E_F = average annual fuel consumption as defined in section 10.4.2 of this appendix
4,600 = as defined in section 11.4.12 of ASHRAE 103–1993
Q_P = pilot fuel input rate determined in accordance with section 9.2 of ASHRAE 103–1993 in Btu/h
$Effy_{HS}$ = annual fuel utilization efficiency as defined in sections 11.2.11, 11.3.11, 11.4.11 or 11.5.11 of ASHRAE 103–1993, in percent, and calculated on the basis of:
isolated combustion system installation, for non-weatherized warm air furnaces; or
outdoor installation, for furnaces that are weatherized.
3,412 = conversion factor from kW to Btu/h
E_{AE} = as defined in section 10.4.3 of this appendix

10.6.2 *Energy factor for electric furnaces.* The energy factor, EF, for electric furnaces is defined as:

$$EF = AFUE$$

Where:
AFUE = annual fuel utilization efficiency as defined in section 10.4.3 of this appendix, in percent

10.7 *Average annual energy consumption for furnaces located in a different geographic region of the United States and in buildings with different design heating requirements.*

10.7.1 *Average annual fuel energy consumption for gas or oil-fueled furnaces located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil-fueled furnaces, the average annual fuel energy consumption for a specific geographic region and a specific typical design heating requirement (E_{FR}) is expressed in Btu per year and defined as:

$$E_{FR} = (E_F - 8{,}760\ Q_P)\ (HLH/2{,}080) + 8{,}760\ Q_P$$

Where:

E_F = as defined in section 10.4.2 of this appendix
8,760 = as defined in section 10.4.1.1 of this appendix
Q_P = as defined in section 11.2.11 of ASHRAE 103–1993
HLH = heating load hours for a specific geographic region determined from the heating load hour map in Figure 1 of this appendix
2,080 = as defined in section 10.4.1 of this appendix

10.7.2 *Average annual auxiliary electrical energy consumption for gas or oil-fueled furnaces located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil-fueled furnaces, the average annual auxiliary electrical energy consumption for a specific geographic region and a specific typical design heating requirement (E_{AER}) is expressed in kilowatt-hours and defined as:

$$E_{AER} = (E_{AE} - E_{SO})\ (HLH/2080) + E_{SOR}$$

Where:

E_{AE} = as defined in section 10.4.3 of this appendix
E_{SO} = as defined in section 10.11 of this appendix
HLH = as defined in section 10.7.1 of this appendix
2,080 = as defined in section 10.4.1 of this appendix
E_{SOR} = as defined in section 10.7.3 of this appendix.

10.7.3 *Average annual electric energy consumption for electric furnaces located in a different geographic region of the United States and in buildings with different design heating requirements.* For electric furnaces, the average annual electric energy consumption for a specific geographic region and a specific typical design heating requirement (E_{ER}) is expressed in kilowatt-hours and defined as:

$$E_{ER} = 100\ (0.77)\ DHR\ HLH/(3.412\ AFUE) + E_{SOR}$$

Where:

100 = as defined in section 10.4.3 of this appendix
0.77 = as defined in section 10.4.1 of this appendix
DHR = as defined in section 10.4.1 of this appendix
HLH = as defined in section 10.7.1 of this appendix
3.412 = as defined in section 10.4.3 of this appendix
AFUE = as defined in section 10.4.3 of this appendix
E_{SOR} = E_{SO} as defined in section 10.11 of this appendix, except that in the equation for E_{SO}, the term BOH is multiplied by the expression (HLH/2080) to get the appropriate regional accounting of standby mode and off mode loss.

10.8 *Annual energy consumption for mobile home furnaces*

10.8.1 *National average number of burner operating hours for mobile home furnaces (BOH_{SS}).* BOH_{SS} is the same as in section 10.4.1 of this appendix, except that the value of $Effy_{HS}$ in the calculation of the burner operating hours, BOH_{SS}, is calculated on the basis of a direct vent unit with system number 9 or 10.

10.8.2 *Average annual fuel energy for mobile home furnaces (E_F).* E_F is same as in section 10.4.2 of this appendix except that the burner operating hours, BOH_{SS}, is calculated as specified in section 10.8.1 of this appendix.

10.8.3 *Average annual auxiliary electrical energy consumption for mobile home furnaces (E_{AE}).* E_{AE} is the same as in section 10.4.3 of this appendix, except that the burner operating hours, BOH_{SS}, is calculated as specified in section 10.8.1 of this appendix.

10.9 *Calculation of sales weighted average annual energy consumption for mobile home furnaces.* To reflect the distribution of mobile homes to geographical regions with average HLH_{MHF} values different from 2,080, adjust the annual fossil fuel and auxiliary electrical energy consumption values for mobile home furnaces using the following adjustment calculations.

10.9.1 For mobile home furnaces, the sales weighted average annual fossil fuel energy consumption is expressed in Btu per year and defined as:

$$E_{F,MHF} = (E_F - 8{,}760\ Q_P)\ HLH_{MHF}/2{,}080 + 8{,}760\ Q_P$$

Where:

E_F = as defined in section 10.8.2 of this appendix
8,760 = as defined in section 10.4.1.1 of this appendix
Q_P = as defined in section 10.2 of this appendix
HLH_{MHF} = 1880, sales weighted average heating load hours for mobile home furnaces
2,080 = as defined in section 10.4.1 of this appendix

10.9.2 For mobile home furnaces, the sales-weighted-average annual auxiliary electrical energy consumption is expressed in kilowatt-hours and defined as:

$$E_{AE,MHF} = E_{AE}\ HLH_{MHF}/2{,}080$$

Where:

E_{AE} = as defined in section 10.8.3 of this appendix
HLH_{MHF} = as defined in section 10.9.1 of this appendix
2,080 = as defined in section 10.4.1 of this appendix

10.10 [Reserved]

10.11 *Average annual electrical standby mode and off mode energy consumption.* Calculate the annual electrical standby mode and off mode energy consumption (E_{SO}) in kilowatt-hours, defined as:

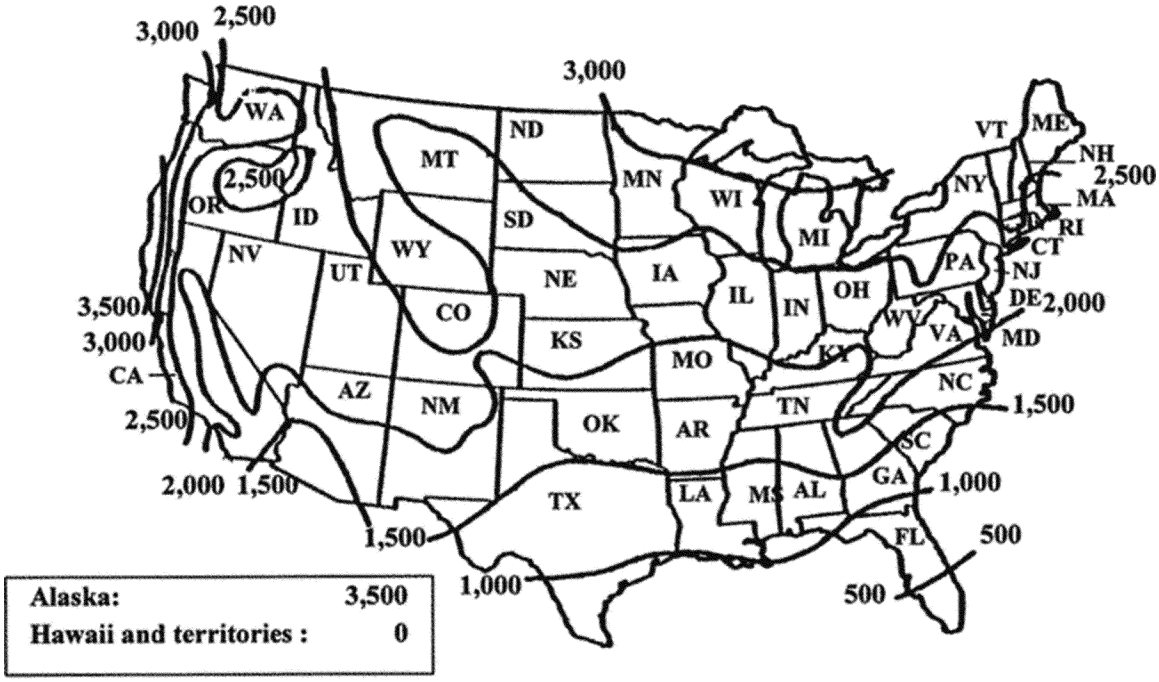
$$E_{SO} = (P_{W,SB}\ (4160 - BOH) + 4600\ P_{W,OFF})\ K$$

Where:

$P_{W,SB}$ = furnace standby mode power, in watts, as measured in section 8.10.1 of this appendix
4,160 = average heating season hours per year
BOH = total burner operating hours as calculated in section 10.4 of this appendix for gas or oil-fueled furnaces. Where for gas or oil-fueled furnaces equipped with single-stage controls, BOH = BOH_{SS}; for gas or oil-fueled furnaces equipped with two-stage controls, BOH = (BOH_R + BOH_H); and for gas or oil-fueled furnaces equipped with step-modulating controls, BOH = (BOH_R + BOH_M). For electric furnaces, BOH = 100(2080)(0.77)DHR/(E_{in} 3.412(AFUE))
4,600 = as defined in section 11.4.12 of ASHRAE 103–1993
$P_{W,OFF}$ = furnace off mode power, in watts, as measured in section 8.10.2 of this appendix
K = 0.001 kWh/Wh, conversion factor from watt-hours to kilowatt-hours

Where:

100 = to express a percent as a decimal
2,080 = as defined in section 10.4.1 of this appendix
0.77 = as defined in section 10.4.1 of this appendix
DHR = as defined in section 10.4.1 of this appendix
E_{in} = steady-state electric rated power, in kilowatts, from section 9.3 of ASHRAE 103–1993
3.412 = as defined in section 10.4.3 of this appendix
AFUE = as defined in section 11.1 of ASHRAE 103–1993 in percent



This map is reasonably accurate for most parts of the United States but is necessarily generalized, and consequently not too accurate in mountainous regions, particularly in the rockies.

FIGURE 1- HEATING LOAD HOURS (HLH) FOR THE UNITED STATES

■ 8. Appendix EE to subpart B of part 430 is added to read as follows:

Appendix EE to Subpart B of Part 430—Uniform Test Method For Measuring the Energy Consumption of Consumer Boilers

0. *Incorporation by reference*

DOE incorporated by reference in § 430.3, the entire standard for ASHRAE 103–2017, ASHRAE 41.6–2014, ASTM D2156–09 (R2018), and IEC 62301. However, only enumerated provisions of ASHRAE 103–2017 are applicable to this appendix, as follows. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over the incorporated standards.

0.1 ASHRAE 103–2017

(a) Section 2 ''Scope'' as referenced in section 1 of this appendix;

(b) Section 3 ''Definitions'' as referenced in section 2 of this appendix;

(c) Section 4 ''Classifications'' as referenced in section 3 of this appendix;

(d) Section 5 ''Requirements'' as referenced in section 4 of this appendix;

(e) Section 6 ''Instruments'' as referenced in sections 5 and 8 of this appendix;

(f) Section 7 ''Apparatus'' (except for sections 7.1 and 7.8) as referenced in sections 6, 7.7, and 8.6 of this appendix;

(g) Section 8 ''Methods of Testing'' (except for sections 8.3.1.3, 8.3.3.1, 8.4.1.1, 8.4.1.1.1, 8.4.1.2, 8.6.1.1, 8.7.2, and 8.8.3) as referenced in sections 7 and 8 of this appendix;

(h) Section 9 ''Test Procedure'' (except for 9.1.2.2.1, 9.1.2.2.2, 9.5.2.1, 9.7.4, and 9.10) as referenced in sections 7.3, 8, and 10.4 of this appendix;

(i) Section 10 ''Nomenclature'' as referenced in section 9 of this appendix; and

(j) Section 11 ''Calculations'' as referenced in sections 8.8 and 10 of this appendix.

0.2 [Reserved]

1. *Scope.* The scope of this appendix is as specified in section 2 of ASHRAE 103–2017 as it pertains to low pressure steam or hot water boiler and electric boilers.

2. *Definitions.* Definitions include those specified in section 3 of ASHRAE 103–2017 and the following additional and modified definitions.

Active mode means the condition in which the boiler is connected to the power source, and at least one of the burner, electric resistance elements, or any electrical auxiliaries such as blowers or pumps, are activated.

Boiler pump means a pump installed on a boiler that maintains adequate water flow through the boiler heat exchanger and that is separate from the circulating water pump.

Draft inducer means a fan incorporated in the boiler that either draws or forces air into the combustion chamber.

Gas valve means an automatic or semi-automatic device consisting essentially of a valve and operator that controls the gas supply to the burner(s) during normal operation of an appliance. The operator may be actuated by application of gas pressure on a flexible diaphragm, by electrical means, by mechanical means or by other means.

Installation and operation (I&O) manual means instructions for installing, commissioning, and operating the boiler, which are supplied with the product when shipped by the manufacturer.

Off mode means a mode in which the boiler is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. The existence of an off switch in off position (a disconnected

circuit) is included within the classification of off mode.

Off switch means the switch on the boiler that, when activated, results in a measurable change in energy consumption between the standby and off modes.

Oil control valve means an automatically or manually operated device consisting of an oil valve for controlling the fuel supply to a burner to regulate burner input.

Standard cubic foot of gas means the amount of gas that would occupy 1 cubic foot when at a temperature of 60 °F and under a pressure equivalent to that of 30 inches Hg if saturated with water vapor.

Standby mode means any mode in which the boiler is connected to a mains power source and offers one or more of the following space heating functions that may persist:

(a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including thermostat or remote control), internal or external sensors, or timer;

(b) Continuous functions, including information or status displays or sensor-based functions.

Thermal stack damper means a type of stack damper that relies exclusively upon the changes in temperature in the stack gases to open or close the damper.

3. *Classifications.* Classifications are as specified in section 4 of ASHRAE 103–2017.

4. *Requirements.* Requirements are as specified in section 5 of ASHRAE 103–2017.

5. *Instruments.* Instruments must be as specified in section 6 of ASHRAE 103–2017. In addition to the requirements in Section 6.3 of ASHRAE 103–2017, instruments for oil pressure shall be calibrated so that the error is no greater than ±0.5 psi.

6. *Apparatus.* The apparatus used in conjunction with the boiler during the testing must be as specified in section 7 of ASHRAE 103–2017 except for sections 7.1 and 7.8; and as specified in sections 6.1 and 6.2 of this appendix. In section 7.2.3.1 of ASHRAE 103–2017, substitute ''in accordance with the I&O manual'' for ''in accordance with manufacturer instructions'' with regard to installing the stack damper.

6.1 *General.*

(a) Install the boiler in the test room in accordance with the I&O manual, as defined in section 2.5 of this appendix, except that if provisions within this appendix are specified, then the provisions herein drafted and prescribed by DOE govern. If the I&O manual and any additional provisions of this appendix are not sufficient for testing a boiler, the manufacturer must request a waiver from the test procedure pursuant to § 430.27.

(b) The apparatuses described in section 6 of this appendix are used in conjunction with the boiler during testing. Each piece of apparatus shall conform to material and construction specifications listed in this appendix and in ASHRAE 103–2017, and the reference standards cited in this appendix and in ASHRAE 103–2017.

(c) Test rooms containing equipment must have suitable facilities for providing the utilities (including but not limited to environmental controls, sufficient fluid source(s), applicable measurement equipment, and any other technology or tools) necessary for performance of the test and must be able to maintain conditions within the limits specified in section 6 of this appendix.

6.2 *Condensate collection.* Attach condensate drain lines to the unit as specified in the I&O manual. Maintain a continuous downward slope of drain lines from the unit. Additional precautions (such as eliminating any line configuration or position that would otherwise restrict or block the flow of condensate or checking to ensure a proper connection with condensate drain spout that allows for unobstructed flow) must be taken to facilitate uninterrupted flow of condensate during the test. Collection containers must be glass or polished stainless steel to facilitate removal of interior deposits. The collection container must have a vent opening to the atmosphere.

7. *Testing conditions.* The testing conditions must be as specified in section 8 of ASHRAE 103–2017 (except for the excluded sub-sections as enumerated in section 0.1(g) of this appendix); and as specified in sections 7.1 to 7.8 of this appendix, respectively. For condensing furnaces and boilers, the relative humidity of the room air shall be measured in accordance with one of the methods described in ASHRAE 41.6–2014 (see section 8.5 of ASHRAE 103–2017).

7.1 *Fuel supply, gas.* In conducting the tests specified herein, gases with characteristics as shown in Table 1 of ASHRAE 103–2017 shall be used. Maintain the gas supply, ahead of all controls for a boiler, at a test pressure between the normal and increased values shown in Table 1 of ASHRAE 103–2017. Maintain the regulator outlet pressure at a level approximating that recommended in the I&O manual, as defined in section 2.5 of this appendix, or, in the absence of such recommendation, to the regulator settings used when the product is shipped by the manufacturer. Use a gas having a specific gravity of approximately that shown in Table 1 of ASHRAE 103–2017 and with a higher heating value within ±5% of the higher heating value shown in Table 1 of ASHRAE 103–2017. Determine the actual higher heating value in Btu per standard cubic foot of gas (defined in section 2 of this appendix) to be used in the test within an error no greater than 1%.

7.2 *Installation of piping.* Install piping equipment in accordance with the I&O manual. In the absence of such specification, install piping in accordance with section 8.3.1.1 of ASHRAE 103–2017.

7.3 *Gas burner.* Adjust the burners of gas-fired boilers to their maximum Btu input ratings at the normal test pressure specified by section 7.1 of this appendix. Correct the burner input rate to reflect gas characteristics at a temperature of 60 °F and atmospheric pressure of 30 in of Hg and adjust to within ±2 percent of the hourly Btu nameplate input rating specified by the manufacturer as measured at the maximum input rate during the steady-state performance test in section 8 of this appendix. Set the primary air shutters in accordance with the I&O manual to give a good flame at this condition. If, however, the setting results in the deposit of carbon on the burners during any test specified herein, the tester shall adjust the shutters and burners until no more carbon is deposited and shall perform the tests again with the new settings (*see* Figure 9 of ASHRAE 103–2017). After the steady-state performance test has been started, do not make additional adjustments to the burners during the required series of performance tests specified in section 9 of ASHRAE 103–2017. If a vent-limiting means is provided on a gas pressure regulator, keep it in place during all tests.

7.4 *Modulating gas burner adjustment at reduced input rate.* For gas-fired boilers equipped with modulating-type controls, adjust the controls to operate the unit at the nameplate minimum input rate. If the modulating control is of a non-automatic type, adjust the control to the setting recommended in the I&O manual. In the absence of such recommendation, the midpoint setting of the non-automatic control shall be used as the setting for determining the reduced fuel input rate. Start the boiler by turning the safety control valve to the ''ON'' position. Use a supply water temperature that will allow for continuous operation without shutoff by

the control. If necessary to achieve such continuous operation, supply water may be increased above 120 °F; in such cases, gradually increase the supply water temperature to determine what minimum supply water temperature, with a 20 °F temperature rise across the boiler, will be needed to adjust for the minimum input rate at the reduced input rate control setting. Monitor regulated gas pressure out of the modulating control valve (or entering the burner) to determine when no further reduction of gas pressure results. The flow rate of water through the boiler shall be adjusted to achieve a 20 °F temperature rise.

7.5 *Oil burner.* Adjust the burners of oil-fired boilers to give a CO_2 reading specified in the I&O manual and an hourly Btu input within ±2% of the hourly Btu nameplate input rating as specified in the I&O manual and as measured at maximum input rate during steady-state performance test as described in section 8 of this appendix. Smoke in the flue may not exceed a No. 1 smoke during the steady-state performance test as measured by the procedure in ASTM D2156–09 (R2018). Maintain the average draft over the fire and in the flue during the steady-state performance test at the value specified in the I&O manual. Do not allow draft fluctuations exceeding 0.005 in. water. Do not make additional adjustments to the burner during the required series of performance tests. The instruments and measuring apparatus for this test are described in section 6 of this appendix and shown in Figure 8 of ASHRAE 103–2017.

7.6 *Measurement of jacket surface temperature.* Divide the jacket of the boiler into 6-inch squares when practical, and otherwise into 36-square-inch regions comprising 4 inch by 9 inch or 3 inch by 12 inch sections, and determine the surface temperature at the center of each square or section with a surface thermocouple. Record the surface temperature of the 36-square-inch areas in groups where the temperature differential of the 36-square-inch areas is less than 10 °F for temperature up to 100 °F above room temperature, and less than 20 °F for temperatures more than 100 °F above room temperature.

7.7 *Installation of vent system.* Keep the vent or air intake system supplied by the manufacturer in place during all tests. Test units intended for installation with a variety of vent pipe lengths with the minimum vent length as specified in the I&O manual, or a 5-ft. flue pipe if there are no recommendations in the I&O manual. Do not connect a boiler employing a direct vent system to a chimney or induced-draft source. Vent combustion products solely by using the venting incorporated in the boiler and the vent or air intake system supplied by the manufacturer. For units that are not designed to significantly preheat the incoming air, see section 7.5 of this appendix and Figure 4a or 4b in section 7 of ASHRAE 103–2017. For units that do significantly preheat the incoming air, *see* Figure 4c or 4d in section 7 of ASHRAE 103–2017.

7.8 *Additional optional method of testing for determining D_P and D_F.* On units whose design is such that there is no measurable airflow through the combustion chamber and heat exchanger when the burner(s) is (are) off as determined by the optional test procedure in section 7.8.1 of this appendix, D_F and D_P may be set equal to 0.05.

7.8.1 *Optional test method for indicating the absence of flow through the heat exchanger.* Manufacturers may use the following test protocol to determine whether air flows through the combustion chamber and heat exchanger when the burner(s) is (are) off. The minimum default draft factor may be used only for units determined pursuant to this protocol to have no airflow through the combustion chamber and heat exchanger.

7.8.1.1 *Test apparatus.* Use a smoke stick that produces smoke that is easily visible and has a density less than or approximately equal to air. Use a smoke stick that produces smoke that is non-toxic to the test personnel and produces gas that is unreactive with the environment in the test chamber.

7.8.1.2 *Test conditions.* Minimize all air currents and drafts in the test chamber, including turning off ventilation if the test chamber is mechanically ventilated. Wait at least two minutes following the termination of the boiler on-cycle before beginning the optional test method for indicating the absence of flow through the heat exchanger.

7.8.1.3 *Location of the test apparatus.* After all air currents and drafts in the test chamber have been eliminated or minimized, position the smoke stick based on the following equipment configuration:

(a) For horizontal combustion air intakes, approximately 4 inches from the vertical plane at the termination of the intake vent and 4 inches below the bottom edge of the combustion air intake; or

(b) for vertical combustion air intakes, approximately 4 inches horizontal from vent perimeter at the termination of the intake vent and 4 inches down (parallel to the vertical axis of the vent). In the instance where the boiler combustion air intake is closer than 4 inches to the floor, place the smoke device directly on the floor without impeding the flow of smoke.

7.8.1.4 *Duration of test.* Establish the presence of smoke from the smoke stick and then monitor the direction of the smoke flow for no less than 30 seconds.

7.8.1.5 *Test results.* During visual assessment, determine whether there is any draw of smoke into the combustion air intake vent.

If absolutely no smoke is drawn into the combustion air intake, the boiler meets the requirements to allow use of the minimum default draft factor provided in section 7.8 of this appendix.

If there is any smoke drawn into the intake, proceed with the methods of testing as prescribed in section 8.8 of ASHRAE 103–2017.

7.8.2 [Reserved]

8. *Test procedure.* Conduct testing and measurements as specified in Section 9 of ASHRAE 103–2017 (except for the excluded sub-sections as enumerated in section 0.1(h) of this appendix); and as specified in sections 8.1 through 8.9 of this appendix. Section 8.4 of this appendix may be used in lieu of section 9.2 of ASHRAE 103–2017.

8.1 *Fuel input.* For gas units, measure and record the steady-state gas input rate in Btu/h, including pilot gas, corrected to standard conditions of 60 °F and 30 in. Hg. Use measured values of gas temperature and pressure at the meter and barometric pressure to correct the metered gas flow rate to the above standard conditions. For oil units, measure and record the steady-state fuel input rate. For maximum input rate, the measured burner input rate shall be within ±2% of the hourly Btu nameplate input rating (Q_{IN}) specified by the manufacturer. For modulating furnaces and boilers operating at reduced input rate, the measured reduced heat input rate ($Q_{IN,R}$) shall be recorded. At the discretion of the one testing, the hourly Btu nameplate minimum input rating specified by the manufacturer may be used in the calculations in place of $Q_{IN,R}$ if the measured rate is within ±2% of the nameplate rating.

8.2 *Electrical input.* During the steady-state test, perform a single measurement of all of the electrical power involved in burner operation (PE), including energizing the ignition system, controls, gas valve or oil control valve, and draft inducer, if applicable. For boilers, the measurement of PE must include the boiler pump if so equipped. If the boiler pump does not operate during the measurement of PE, add the boiler pump nameplate power to the

measurement of PE. If the boiler pump nameplate power is not available, use 0.13 kW. For hot water boilers, use the circulating water pump nameplate power for BE, or if the pump nameplate power is not available, use 0.13 kW.

8.3 *Input to interrupted ignition device.* For burners equipped with an interrupted ignition device, record the nameplate electric power used by the ignition device, PE_{IG}, or record that PE_{IG} = 0.4 kW if no nameplate power input is provided. Record the nameplate ignition device on-time interval, t_{IG}, or, if the nameplate does not provide the ignition device on-time interval, measure the on-time interval with a stopwatch at the beginning of the test, starting when the burner is turned on. Set t_{IG} = 0 and PE_{IG} = 0 if the device on-time interval is less than or equal to 5 seconds after the burner is on.

8.4 *Cycling Test Requirements.* For the measurement of condensate heat loss under cyclic conditions (for condensing boilers), section 9.8 of ASHRAE 103–2017 shall apply. Cycle times calculated from Table 7 of ASHRAE 103–2017 shall be rounded to the nearest second.

8.5 *Optional test procedures for condensing boilers, measurement of condensate during the establishment of steady-state conditions.* For units with step-modulating or two-stage controls, conduct the test at both the maximum and reduced inputs. In lieu of collecting the condensate immediately after the steady state conditions have been reached as required by section 9.2 of ASHRAE 103–2017, condensate may be collected during the establishment of steady state conditions as defined by section 9.1.2.1 of ASHRAE 103–2017. Perform condensate collection for at least 30 minutes. Measure condensate mass immediately at the end of the collection period to prevent evaporation loss from the sample. Record fuel input for the 30-minute condensate collection test period. Observe and record fuel higher heating value (HHV), temperature, and pressures necessary for determining fuel energy input ($Q_{C,SS}$). Measure the fuel quantity and HHV with errors no greater than 1%. The humidity for the room air shall at no time exceed 80%. Determine the mass of condensate for the establishment of steady state conditions ($M_{C,SS}$) in pounds by subtracting the tare container weight from the total container and condensate weight measured at the end of the 30-minute condensate collection test period.

8.6 *Cool-down test for gas- and oil-fueled boilers without stack dampers.* After steady-state testing has been completed, turn the main burner(s) ''OFF'' and measure the flue gas temperature at 3.75 minutes (temperature designated as $T_{F,OFF}(t_3)$) and 22.5 minutes (temperature designated as $T_{F,OFF}(t_4)$) after the burner shut-off using the thermocouple grid described in section 7.6 of ASHRAE 103–2017.

a. During this off-period, for units that do not have pump delay after shut-off, do not allow any water to circulate through the hot water boilers.

b. For units that have pump delay on shut-off, except those having pump controls sensing water temperature, the unit control must stop the pump. Measure and record the time between burner shut-off and pump shut-off (t^+) to the nearest second.

c. For units having pump delay controls that sense water temperature, operate the pump for 15 minutes and record t^+ as 15 minutes. While the pump is operating, maintain the inlet water temperature and flow rate at the same values as used during the steady-state test, as specified in sections 9.1 and 8.4.2.3 of ASHRAE 103–2017.

d. For boilers that employ post-purge, measure the length of the post-purge period with a stopwatch. Record the time from burner ''OFF'' to combustion blower ''OFF'' (electrically de-energized) as t_P. Measure the flue gas temperature by means of the thermocouple grid described in section 7.6 of ASHRAE 103–2017 at the end of the post-purge period t_P ($T_{F,OFF}(t_P)$) and at (3.75 + t_P) minutes ($T_{F,OFF}(t_3)$) and (22.5 + t_P) minutes ($T_{F,OFF}(t_4)$) after the main burner shuts off. If t_P is prescribed by the I&O manual or measured to be greater than 3 minutes, also measure the flue gas temperature at the midpoint of the post-purge period $t_P/2$ ($T_{F,OFF}(t_P/2)$). If the measured t_P is less than or equal to 30 seconds, record t_P as 0 and conduct the cool-down test as if there is no post-purge.

8.7 [Reserved]

8.8 *Calculation options.* The rate of the flue gas mass flow through the boiler and the factors D_P, D_F, and D_S are calculated by the equations in sections 11.6.1, 11.6.2, 11.6.3, 11.6.4, 11.7.1, and 11.7.2 of ASHRAE 103–2017. On units whose design is such that there is no measurable airflow through the combustion chamber and heat exchanger when the burner(s) is (are) off (as determined by the optional test procedure in section 7.8 of this appendix), D_F and D_P may be set equal to 0.05.

8.9 *Optional test procedures for condensing boilers that have no off-period flue losses.* For units that have applied the test method in section 7.8 of this appendix to determine that no measurable airflow exists through the combustion chamber and heat exchanger during the burner off-period and having post-purge periods of less than 30 seconds, the cool-down and heat-up tests specified in sections 9.5 and 9.6 of ASHRAE 103–2017 may be omitted. In lieu of conducting the cool-down and heat-up tests, the tester may use the losses determined during the steady-state test described in section 9.1 of ASHRAE 103–2017 when calculating heating seasonal efficiency, $Effy_{HS}$.

8.10 *Measurement of electrical standby and off mode power.*

8.10.1 *Standby power measurement.* With all electrical auxiliaries of the boiler not activated, measure the standby power ($P_{W,SB}$) in accordance with the procedures in IEC 62301, except that section 8.5, *Room Ambient Temperature,* of ASHRAE 103–2017 and the voltage provision of section 8.2.1.4, *Electrical Supply,* of ASHRAE 103–2017 shall apply in lieu of the corresponding provisions of IEC 62301 at section 4.2, *Test room,* and the voltage specification of section 4.3, *Power supply.* Frequency shall be 60Hz. Clarifying further, IEC 62301 section 4.4, *Power measurement instruments,* and section 5, *Measurements,* apply in lieu of ASHRAE 103–2017 section 6.10, *Energy Flow Rate.* Measure the wattage so that all possible standby mode wattage for the entire appliance is recorded, not just the standby mode wattage of a single auxiliary. Round the recorded standby power ($P_{W,SB}$) to the second decimal place, except for loads greater than or equal to 10W, which must be recorded to at least three significant figures.

8.10.2 *Off mode power measurement.* If the unit is equipped with an off switch or there is an expected difference between off mode power and standby mode power, measure off mode power ($P_{W,OFF}$) in accordance with the standby power procedures in IEC 62301, except that section 8.5, *Room Ambient Temperature,* of ASHRAE 103–2017 and the voltage provision of section 8.2.1.4, *Electrical Supply,* of ASHRAE 103–2017 shall apply in lieu of the corresponding provisions of IEC 62301 at section 4.2, *Test room,* and the voltage specification of section 4.3, *Power supply.* Frequency shall be 60Hz. Clarifying further, IEC 62301 section 4.4, *Power measurement instruments,* and section 5, *Measurements,* apply for this measurement in lieu of SHRAE 103–2017 section 6.10, *Energy Flow Rate.* Measure the wattage so that all possible off mode wattage for the entire appliance is recorded, not just the off mode wattage of a single auxiliary. If there is no expected difference in off

mode power and standby mode power, let $P_{W,OFF} = P_{W,SB}$, in which case no separate measurement of off mode power is necessary. Round the recorded off mode power ($P_{W,OFF}$) to the second decimal place, except for loads greater than or equal to 10W, in which case round the recorded value to at least three significant figures.

9. *Nomenclature.* Nomenclature includes the nomenclature specified in Section 10 of ASHRAE 103–2017 and the following additional variables:

Eff_{motor} = Efficiency of power burner motor

PE_{IG} = Electrical power to the interrupted ignition device, kW

$R_{T,a} = R_{T,F}$ if flue gas is measured

$= R_{T,S}$ if stack gas is measured

$R_{T,F}$ = Ratio of combustion air mass flow rate to stoichiometric air mass flow rate

$R_{T,S}$ = Ratio of the sum of combustion air and relief air mass flow rate to stoichiometric air mass flow rate

t_{IG} = Electrical interrupted ignition device on-time, min.

$T_{a,SS,X} = T_{F,SS,X}$ if flue gas temperature is measured, °F

$= T_{S,SS,X}$ if stack gas temperature is measured, °F

y_{IG} = Ratio of electrical interrupted ignition device on-time to average burner on-time

y_P = Ratio of power burner combustion blower on-time to average burner on-time

E_{SO} = Average annual electric standby mode and off mode energy consumption, in kilowatt-hours

$P_{W,OFF}$ = Boiler off mode power, in watts

$P_{W,SB}$ = Boiler standby mode power, in watts

10. *Calculation of derived results from test measurements.* Perform calculations as specified in section 11 of ASHRAE 103–2017, except for appendices B and C; and as specified in sections 10.1 through 10.7 and Figure 1 of this appendix.

10.1 *Annual fuel utilization efficiency.* The annual fuel utilization efficiency (AFUE) is as defined in sections 11.2.12 (non-condensing systems), 11.3.12 (condensing systems), 11.4.12 (non-condensing modulating systems) and 11.5.12 (condensing modulating systems) of ASHRAE 103–2017, except for the following:

10.1.1 *Off-cycle Infiltration Heat Loss.* The off-cycle infiltration heat loss ($L_{I,OFF1}$) is as defined in sections 11.2.10.8 (non-condensing systems), 11.3.10.8 (condensing systems), 11.4.10.8 (non-condensing modulating systems) and 11.5.10.8 (condensing modulating systems) of ASHREAE 103–2017, with the following exception. For systems numbered 2, 3, and 4, with a post-purge time of 3 minutes or less, $L_{I,OFF1}$ shall be determined as follows:

$$L_{I,OFF1} = 100 \times C_P \times M_{F,ON} \times t_P \times \left(T_{F,SS} + T_{abs}\right) \times \left(\frac{1}{t_{ON} \times Q_{IN}/60}\right) \times \left\{\frac{T_{IA} - T_{OA}}{C_{T,OFF} \times \left[T_{F,SS} - T_{F,OFF}(t_P)\right]} \times \ln\left[\frac{T_{RA} + T_{abs} + C_{T,OFF} \times \left(T_{F,SS} - T_{RA}\right)}{T_{RA} + T_{abs} + C_{T,OFF} \times \left(T_{F,OFF}(t_P) - T_{RA}\right)}\right]\right\}$$

10.1.2 *Determination of $Effy_{HS}$ in the Defining Equation for AFUE.* $Effy_{HS}$ is defined as:

$Effy_{HS}$ = heating seasonal efficiency as defined in sections 11.2.11 (non-condensing systems), 11.3.11 (condensing systems), 11.4.11 (non-condensing modulating systems) and 11.5.11 (condensing modulating systems) of ASHRAE 103–2017, and is based on the assumptions that weatherized boilers are located outdoors and that non-weatherized boilers are installed indoors.

10.1.3 *Balance Point Temperature for Condensing Modulating Boilers.* Calculate the balance point temperature (T_C) for condensing, modulating boilers by using the following equation in place of that referenced by section 11.5.8.4 of ASHRAE 103–2017: T_C =

$$T_{SH} - \left[\left(T_{SH} - T_{OA,T}\right)(1 + \alpha)\left(\frac{Q_{IN,R}(100 - L_{L,A} - L_{S,SSR}}{Q_{IN}(100 - L_{L,A} - L_{S,SS})}\right)\right]$$

Where:

T_{SH} = typical average outdoor temperature at which a boiler starts operating, 65 °F

$T_{OA,T}$ = the typical outdoor design temperature, 5 °F

α = oversize factor, as defined in 11.4.8.2

Q_{IN} = steady-state nameplate maximum fuel input rate

$Q_{IN,R}$ = steady-state reduced input fuel input rate

$L_{S,SSR}$ = average sensible heat loss at steady state, reduced input operation

$L_{S,SS}$ = average sensible heat loss at steady state, maximum input operation

10.2 *National average burner operating hours, average annual fuel energy consumption, and average annual auxiliary electrical energy consumption for gas or oil boilers.*

10.2.1 *National average number of burner operating hours.*

10.2.1.1 For boilers equipped with single-stage controls, the national average number of burner operating hours is defined as:

BOH_{SS} = 2,080 (0.77) (A) [(Q_{OUT}/1000)/(1+α)] − 2,080 (B)

Where:

2,080 = national average heating load hours

0.77 = adjustment factor to adjust the calculated design heating requirement and heating load hours to the actual heating load experienced by the heating system

A = 100,000/[341,200 (y_P PE + y_{IG} PE_{IG} + y BE) + ($Q_{IN} - Q_P$) $Effy_{HS}$], for forced draft unit, indoors

= 100,000/[341,200 (y_P PE (1 − Eff_{motor}) + y_{IG} PE_{IG} + y BE) + ($Q_{IN} - Q_P$) $Effy_{HS}$], for induced draft unit, indoors, and

Q_{OUT} = value as defined in section 11.2.8.1 of ASHRAE 103–2017.

α = value as defined in section 11.2.8.2 of ASHRAE 103–2017.

$B = 2\ Q_P\ (Effy_{HS})\ (A)/100{,}000$

Where:

Eff_{motor} = nameplate power burner motor efficiency provided by the manufacturer,

= 0.50, an assumed default power burner efficiency if not provided by the manufacturer.

100,000 = factor that accounts for percent and kBtu

y_P = ratio of induced or forced draft blower on-time to average burner on-time, as follows:

1 for units without post-purge;

$1 + (t_P/t_{ON})$ for single stage boilers with post purge; or

PE = all electrical power related to burner operation at full load steady-state operation, including electrical ignition device if energized, controls, gas valve or oil control valve, draft inducer, and boiler pump, as determined in section 8.2 of this appendix.

y_{IG} = ratio of burner interrupted ignition device on-time to average burner on-time, as follows:

0 for burners not equipped with interrupted ignition device;

(t_{IG}/t_{ON}) for single stage boilers

PE_{IG} = electrical input rate to the interrupted ignition device on burner (if employed), as defined in section 8.3 of this appendix

y = ratio of pump on-time to average burner on-time, as follows:

1 for boilers without a pump delay;

$1 + (t^+/t_{ON})$ for single-stage boilers with pump delay;

BE = circulating water pump electrical energy input rate at full-load steady-state operation as defined in section 8.2 of this appendix.

t_P = post-purge time as defined in section 8.5 of this appendix

= 0 if t_P is equal to or less than 30 seconds

t_{IG} = on-time of the burner interrupted ignition device, as defined in section 8.3 of this appendix

Q_{IN} = as defined in section 11.2.8.1 of ASHRAE 103–2017

Q_P = as defined in section 11.2.11 of ASHRAE 103–2017

$Effy_{HS}$ = as defined in section 11.2.11 (non-condensing systems) or section 11.3.11.3 (condensing systems) of ASHRAE 103–2017, percent, and calculated on the basis of:

indoor installation, for non-weatherized boilers; or outdoor installation, for boilers that are weatherized.

2 = ratio of the average length of the heating season in hours to the average heating load hours

t^+ = delay time between burner shutoff and the pump shutoff measured as defined in section 8.5 of this appendix.

t_{ON} = value as defined in Table 7 of ASHRAE 103–2017.

10.2.1.2 For boilers equipped with two-stage or step-modulating controls, the national average number of burner operating hours at the reduced operating mode (BOH_R) is defined as:

$$BOH_R = X_R\ (2080)(0.77)[(Q_{OUT}/1{,}000)/(1+\alpha)](A_R) - 2080(B_R)$$

Where:

X_R = as defined in section 11.4.8.6 of SHRAE 103–2017

2080 = as defined in section 10.2.1.1 of this appendix

0.77 = as defined in section 10.2.1.1 of this appendix

Q_{OUT} = as defined in section 11.4.8.1.1 or 11.5.8.1.1 of ASHRAE 103–2017

α = as defined in section 11.4.8.2 of ASHRAE 103–2017

$A_R = 100{,}000/[341{,}200(y_{P,R}PE_R + y_{IG,R}PE_{IG} + y_RBE_R) + (Q_{IN,R} - Q_P)\ Effy_{U,R}]$ for forced draft unit, indoors; and

$= 100{,}000/[341{,}200(y_{P,R}PE_R\ (1 - Eff_{motor}) + y_{IG,R}PE_{IG} + y_RBE_R) + (Q_{IN,R} - Q_P)\ Effy_{U,R}]$ for induced draft unit, indoors

$B_R = 2Q_P\ (Effy_{U,R})\ (A_R)/100{,}000$

100,000 = conversion factor accounting for percent and 1,000 Btu/kBtu

341,200 = conversion factor accounting for percent and 3412 Btu/h/kW

$y_{P,R} = 1 + (t_p/t_{ON,R})$ for two-stage and step modulating boilers with post purge

PE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate

$y_{IG,R} = t_{IG}/t_{ON,R}$

PE_{IG} = as defined in section 8.3 of this appendix

$y_R = 1 + (t^+)/t_{ON,R}$ for two-stage and step modulating boilers with fan delay

BE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate

$Q_{IN,R}$ = as defined in section 11.4.8.1.2 of ASHRAE 103–2017

Q_P = as defined in section 11.4.12 of ASHRAE 103–2017

$Effy_{U,R}$ = as defined in section 11.4.11.1 or 11.5.11.1 of ASHRAE 103–2017, and calculated on the basis of:

indoor installation, for non-weatherized boilers; or

outdoor installation, for boilers that are weatherized.

Eff_{motor} = nameplate power burner motor efficiency provided by the manufacturer,

= 0.50, an assumed default power burner efficiency if not provided by the manufacturer.

10.2.1.3 For boilers equipped with two-stage controls, the national average number of burner operating hours at the maximum operating mode (BOH_H) is defined as:

$$BOH_H = X_H\ (2080)(0.77)[(Q_{OUT}/1{,}000)/(1+\alpha)](A_H) — 2080(B_H)$$

Where:

X_H = as defined in section 11.4.8.5 of SHRAE 103–2017

2080 = as defined in section 10.2.1.1 of this appendix

0.77 = as defined in section 10.2.1.1 of this appendix

Q_{OUT} = as defined in section 11.4.8.1.1 or 11.5.8.1.1 ofASHRAE 103–2017

α = as defined in section 11.4.8.2 of ASHRAE 103–2017

$A_H = 100{,}000/[341{,}200(y_{P,H}PE_H + y_{IG,H}PE_{IG} + y_HBE_H) + (Q_{IN,H} — Q_P)\ Effy_{U,H}]$ for forced draft unit, indoors; and

$= 100{,}000/[341{,}200(y_{P,H}PE_H\ (1 — Eff_{motor}) + y_{IG,H}PE_{IG} + y_HBE_H) + (Q_{IN,H} — Q_P)\ Effy_{U,H}]$ for induced draft unit, indoors

$B_H = 2Q_P\ (Effy_{U,H})\ (A_H)/100{,}000$

100,000 = conversion factor accounting for percent and 1,000 Btu/kBtu

341,200 = conversion factor accounting for percent and 3412 Btu/h/kW

$y_{P,H} = 1 + (t_p/t_{ON,H})$ for two-stage and step modulating boilers with post purge

PE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate

$y_{IG,H} = t_{IG}/t_{ON,H}$

PE_{IG} = as defined in section 8.3 of this appendix

$y_H = 1 + (t^+)/t_{ON,H}$ for two-stage and step modulating boilers with fan delay

BE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate

$Q_{IN,H}$ = as defined in section 11.4.8.1.1 of ASHRAE 103–2017

Q_P = as defined in section 11.4.12 of ASHRAE 103–2017

$Effy_{U,H}$ = as defined in section 11.4.11.2 or 11.5.11.2 of ASHRAE 103–2017, and calculated on the basis of:

indoor installation, for non-weatherized boilers; or

outdoor installation, for boilers that are weatherized.

Eff_{motor} = nameplate power burner motor efficiency provided by the manufacturer,

= 0.50, an assumed default power burner efficiency if not provided by the manufacturer.

10.2.1.4 For boilers equipped with step-modulating controls, the national average number of burner operating hours at the modulating operating mode (BOH_M) is defined as:

$$BOH_M = X_H\ (2080)(0.77)[(Q_{OUT}/1{,}000)/(1+\alpha)](A_M) — 2080(B_M)$$

Where:

X_H = as defined in section 11.4.8.5 of ASHRAE 103–2017

2080 = as defined in section 10.2.1.1 of this appendix

0.77 = as defined in section 10.2.1.1 of this appendix

Q_{OUT} = as defined in section 11.4.8.1.1 or 11.5.8.1.1 of ASHRAE 103–2017

α = as defined in section 11.4.8.2 of ASHRAE 103–2017

$A_M = 100{,}000/[341{,}200(y_{P,H}PE_H + y_{IG,H}PE_{IG} + y_HBE_H) + (Q_{IN,M} — Q_P)\ Effy_{U,M}]$ for forced draft unit, indoors; and

$= 100{,}000/[341{,}200(y_{P,H}PE_H\ (1 — Eff_{motor}) + y_{IG,H}PE_{IG} + y_HBE_H) + (Q_{IN,M} — Q_P)\ Effy_{U,M}]$ for induced draft unit, indoors

$B_M = 2Q_P\ (Effy_{U,M})\ (A_M)/100{,}000$

100,000 = conversion factor accounting for percent and 1,000 Btu/kBtu

341,200 = conversion factor accounting for percent and 3412 Btu/h/kW

$y_{P,H} = 1 + (t_p/t_{ON,H})$ for two-stage and step modulating boilers with post purge

PE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate

$y_{IG,H} = t_{IG}/t_{ON,H}$

PE_{IG} = as defined in section 8.3 of this appendix

$y_H = 1 + (t^+)/t_{ON,H}$ for two-stage and step modulating boilers with fan delay

BE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
$Q_{IN,M} = (100)(Q_{OUT,M}/Effy_{SS,M})$
$Q_{OUT,M}$ = as defined in section 11.4.8.9 or 11.5.8.9 of ASHRAE 103–2017
$Effy_{SS,M}$ = value as defined in section 11.4.8.7 or 11.5.8.7 of ASHRAE 103–2017
Q_P = as defined in section 11.4.12 of ASHRAE 103–2017
$Effy_{U,M}$ = as defined in section 11.4.9.2.3 or 11.5.9.2.3 of ASHRAE 103–2017, and calculated on the basis of:
indoor installation, for non-weatherized boilers; or
outdoor installation, for boilers that are weatherized.
Eff_{motor} = nameplate power burner motor efficiency provided by the manufacturer, = 0.50, an assumed default power burner efficiency if not provided by the manufacturer.

10.2.2 *Average annual fuel energy consumption for gas or oil fueled boilers.*

10.2.2.1 For boilers equipped with single-stage controls, the average annual fuel energy consumption (E_F) is expressed in Btu per year and defined as:

$$E_F = BOH_{SS}\ (Q_{IN} - Q_P) + 8{,}760\ Q_P$$

Where:

BOH_{SS} = as defined in section 10.2.1.1 of this appendix
Q_{IN} = as defined in section 11.2.8.1 of ASHRAE 103–2017
Q_P = as defined in section 11.2.11 of ASHRAE 103–2017
8,760 = total number of hours per year.

10.2.2.2 For boilers equipped with either two-stage or step modulating controls, E_F is defined as follows. For two-stage control:

$$E_F = (BOH_H)(Q_{IN}) + (BOH_R)(Q_{IN,R}) + [8760 - (BOH_H + BOH_R)]Q_P$$

For step-modulating control:

$$E_F = (BOH_M)(Q_{IN,M}) + (BOH_R)(Q_{IN,R}) + [8760 - (BOH_H + BOH_R)]Q_P$$

Where:

BOH_H = as defined in section 10.2.1.3 of this appendix
BOH_R = as defined in section 10.2.1.2 of this appendix
BOH_M = as defined in section 10.2.1.4 of this appendix
Q_{IN} = as defined in section 11.2.8.1 of ASHRAE 103–2017
$Q_{IN,R}$ = as defined in section 11.4.8.1.2 of ASHRAE 103–2017
$Q_{IN,M}$ = as defined in section 10.2.1.4 of this appendix
8,760 = total number of hours per year
Q_P = as defined in section 11.2.11 of ASHRAE 103–2017.

10.2.3 *Average annual auxiliary electrical energy consumption for gas or oil-fueled boilers.*

10.2.3.1 For boilers equipped with single-stage controls, the average annual auxiliary electrical consumption (E_{AE}) is expressed in kilowatt-hours and defined as:

$$E_{AE} = BOH_{SS}\ (y_P\ PE + y_{IG}\ PE_{IG} + yBE) + E_{SO}$$

Where:

BOH_{SS} = as defined in section 10.2.1.1 of this appendix
y_P = as defined in section 10.2.1.1 of this appendix
PE = as defined in section 10.2.1.1 of this appendix
y_{IG} = as defined in section 10.2.1.1 of this appendix
PE_{IG} = as defined in section 10.2.1.1 of this appendix
y = as defined in section 10.2.1.1 of this appendix
BE = as defined in section 10.2.1.1 of this appendix
E_{SO} = as defined in section 10.7 of this appendix.

10.2.3.2 For boilers equipped with two-stage controls, E_{AE} is defined as:

$$E_{AE} = BOH_R\ (y_{P,R}\ PE_R + y_{IG,R}\ PE_{IG} + y_R BE_R) + BOH_H\ (y_{P,H}\ PE_H + y_{IG,H}\ PE_{IG} + y_H BE_H) + E_{SO}$$

Where:

BOH_R = as defined in section 10.2.1.2 of this appendix
$y_{P,R}$ = as defined in section 10.2.1.2 of this appendix
PE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
$y_{IG,R}$ = as defined in section 10.2.1.2 of this appendix
PE_{IG} = as defined in section 10.2.1.1 of this appendix
y_R = as defined in section 10.2.1.2 of this appendix
BE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
BOH_H = as defined in section 10.2.1.3 of this appendix
PE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
$y_{P,H}$ = as defined in section 10.2.1.3 of this appendix
$y_{IG,H}$ = as defined in section 10.2.1.3 of this appendix
BE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
y_H = as defined in section 10.2.1.3 of this appendix
E_{SO} = as defined in section 10.7 of this appendix.

10.2.3.3 For boilers equipped with step-modulating controls, E_{AE} is defined as:

$$E_{AE} = BOH_R\ (y_{P,R}\ PE_R + y_{IG,R}\ PE_{IG} + y_R\ BE_R) + BOH_M\ (y_{P,H}\ PE_H + y_{IG,H}\ PE_{IG} + y_H BE_H) + E_{SO}$$

Where:

BOH_R = as defined in section 10.2.1.2 of this appendix
$y_{P,R}$ = as defined in section 10.2.1.2 of this appendix
PE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
$y_{IG,R}$ = as defined in section 10.2.1.2 of this appendix
PE_{IG} = as defined in section 10.2.1 of this appendix
y_R = as defined in section 10.2.1.2 of this appendix
BE_R = as defined in section 8.2 of this appendix and measured at the reduced fuel input rate
BOH_M = as defined in 10.2.1.4 of this appendix
$y_{P,H}$ = as defined in section 10.2.1.3 of this appendix
PE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
$y_{IG,H}$ = as defined in section 10.2.1.3 of this appendix
y_H = as defined in section 10.2.1.3 of this appendix
BE_H = as defined in section 8.2 of this appendix and measured at the maximum fuel input rate
E_{SO} = as defined in section 10.7 of this appendix.

10.3 *Average annual electric energy consumption for electric boilers.* For electric boilers, the average annual electrical energy consumption (E_E) is expressed in kilowatt-hours and defined as:

$$E_E = 100\ (2{,}080)\ (0.77)\ [Q_{OUT}/(1+\alpha)]/(3412\ AFUE) + E_{SO}$$

Where:

100 = to express a percent as a decimal
2,080 = as defined in section 10.2.1.1 of this appendix
0.77 = as defined in section 10.2.1.1 of this appendix
Q_{OUT} = as defined in section 11.2.8 of ASHRAE 103–2017
α = as defined in section 11.2.8.2 of ASHRAE 103–2017
3412 = conversion factor from kilowatt-hours to Btu
AFUE = as defined in section 11.1 of ASHRAE 103–2017, in percent, and calculated on the basis of:
indoor installation, for non-weatherized boilers; or
outdoor installation, for boilers that are weatherized.
E_{SO} = as defined in section 10.7 of this appendix.

10.4 *Energy factor.*

10.4.1 *Energy factor for gas or oil boilers.* Calculate the energy factor, EF, for gas or oil boilers defined as, in percent:

$$EF = (E_F - 4{,}600\ (Q_P))(Effy_{HS})/(E_F + 3{,}412\ (E_{AE}))$$

Where:

E_F = average annual fuel consumption as defined in section 10.2.2 of this appendix
4,600 = as defined in section 11.4.12 of ASHRAE 103–2017
Q_P = pilot fuel input rate determined in accordance with section 9.2 of ASHRAE 103–2017 in Btu/h

$Effy_{HS}$ = annual fuel utilization efficiency as defined in sections 11.2.11, 11.3.11, 11.4.11 or 11.5.11 of ASHRAE 103–2017, in percent, and calculated on the basis of:
indoor installation, for non-weatherized boilers; or
outdoor installation, for boilers that are weatherized.
3,412 = conversion factor from kW to Btu/h
E_{AE} = as defined in section 10.2.3 of this appendix.

10.4.2 *Energy factor for electric boilers.* The energy factor, EF, for electric boilers is defined as:

$$EF = AFUE$$

Where:

AFUE = annual fuel utilization efficiency as defined in section 10.3 of this appendix, in percent.

10.5 *Average annual energy consumption for boilers located in a different geographic region of the United States and in buildings with different design heating requirements.*

10.5.1 *Average annual fuel energy consumption for gas or oil-fueled boilers located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil-fueled boilers, the average annual fuel energy consumption for a specific geographic region and a specific typical design heating requirement (E_{FR}) is expressed in Btu per year and defined as:

$$E_{FR} = (E_F - 8{,}760\ Q_P)\ (HLH/2{,}080) + 8{,}760\ Q_P$$

Where:

E_F = as defined in section 10.2.2 of this appendix
8,760 = as defined in section 10.2.2 of this appendix
Q_P = as defined in section 11.2.11 of ASHRAE 103–2017
HLH = heating load hours for a specific geographic region determined from the heating load hour map in Figure 1 of this appendix
2,080 = as defined in section 10.2.1.1 of this appendix.

10.5.2 *Average annual auxiliary electrical energy consumption for gas or oil-fueled boilers located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil-fueled boilers, the average annual auxiliary electrical energy consumption for a specific geographic region and a specific typical design heating requirement (E_{AER}) is expressed in kilowatt-hours and defined as:

$$E_{AER} = (E_{AE} - E_{SO})\ (HLH/2080) + E_{SOR}$$

Where:

E_{AE} = as defined in section 10.2.3 of this appendix
E_{SO} = as defined in section 10.7 of this appendix
HLH = as defined in section 10.5.1 of this appendix
2,080 = as defined in section 10.2.1.1 of this appendix
E_{SOR} = as defined in section 10.5.3 of this appendix.

10.5.3 *Average annual electric energy consumption for electric boilers located in a different geographic region of the United States and in buildings with different design heating requirements.* For electric boilers, the average annual electric energy consumption for a specific geographic region and a specific typical design heating requirement (E_{ER}) is expressed in kilowatt-hours and defined as:

$$E_{ER} = 100\ (0.77)\ [Q_{OUT}/(1+\alpha)]\ HLH/(3.412\ AFUE) + E_{SOR}$$

Where:

100 = as defined in section 10.2.3 of this appendix
0.77 = as defined in section 10.2.1.1 of this appendix
Q_{OUT} = as defined in section 11.2.8.1 of ASHRAE 103–2017
α = as defined in section 11.2.8.2 of ASHRAE 103–2017
HLH = as defined in section 10.5.1 of this appendix
3.412 = as defined in section 10.2.3 of this appendix
AFUE = as defined in section 10.2.3 of this appendix
E_{SOR} = E_{SO} as defined in section 10.7 of this appendix, except that in the equation for E_{SO}, the term BOH is multiplied by the expression (HLH/2080) to get the appropriate regional accounting of standby mode and off mode loss.

10.6 [Reserved]

10.7 *Average annual electrical standby mode and off mode energy consumption.* Calculate the annual electrical standby mode and off mode energy consumption (E_{SO}) in kilowatt-hours, defined as:

$$E_{SO} = (P_{W,SB}\ (4160 - BOH) + 4600\ P_{W,OFF})\ K$$

Where:

$P_{W,SB}$ = boiler standby mode power, in watts, as measured in section 8.9.1 of this appendix
4,160 = average heating season hours per year
BOH = total burner operating hours as calculated in section 10.2 of this appendix for gas or oil-fueled boilers. Where for gas or oil-fueled boilers equipped with single-stage controls, BOH = BOH_{SS}; for gas or oil-fueled boilers equipped with two-stage controls, BOH = (BOH_R + BOH_H); and for gas or oil-fueled boilers equipped with step-modulating controls, BOH = (BOH_R + BOH_M). For electric boilers, BOH = $100(2080)(0.77)[Q_{OUT}/(1+\alpha)]/(E_{in}\ 3412(AFUE))$
4,600 = as defined in section 11.4.12 of ASHRAE 103–2017
$P_{W,OFF}$ = boiler off mode power, in watts, as measured in section 8.9.2 of this appendix
K = 0.001 kWh/Wh, conversion factor from watt-hours to kilowatt-hours

Where:

100 = to express a percent as a decimal
2,080 = as defined in section 10.2.1.1 of this appendix
0.77 = as defined in section 10.2.1.1 of this appendix
Q_{OUT} = as defined in section 11.2.8 of ASHRAE 103–2017
α = as defined in section 11.2.8.2 of ASHRAE 103–2017
E_{in} = steady-state electric rated power, in kilowatts, from section 9.3 of ASHRAE 103–2017
3412 = as defined in section 10.3 of this appendix
AFUE = as defined in section 11.1 of ASHRAE 103–2017 in percent.

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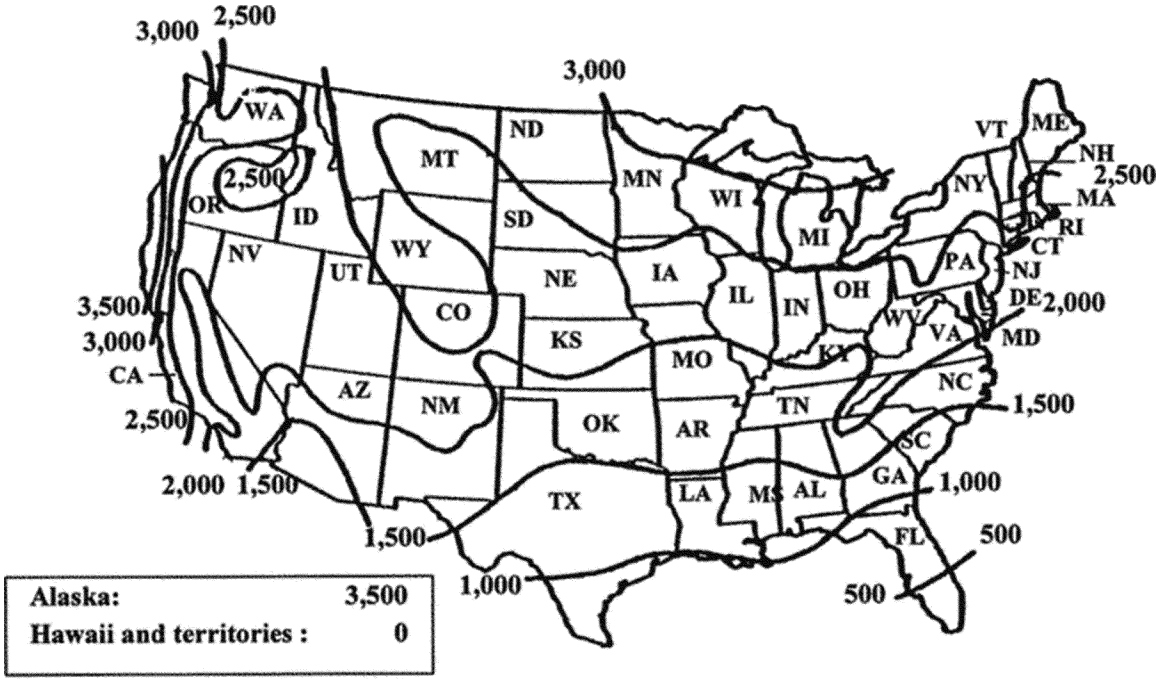

This map is reasonably accurate for most parts of the United States but is necessarily generalized, and consequently not too accurate in mountainous regions, particularly in the rockies.

FIGURE 1- HEATING LOAD HOURS (HLH) FOR THE UNITED STATES

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Part III

Federal Communications Commission

47 CFR Parts 54 and 64

Supporting Survivors of Domestic and Sexual Violence, Lifeline and Link Up Reform and Modernization, Affordable Connectivity Program; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 64

[WC Docket Nos. 22–238, 11–42, and 21–450; FCC 23–9; FR ID 129141]

Supporting Survivors of Domestic and Sexual Violence, Lifeline and Link Up Reform and Modernization, Affordable Connectivity Program

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) begins the process of implementing the Safe Connections Act, taking significant steps to improve access to communications services for survivors of domestic abuse and related crimes. We seek comment on the implementation of the Safe Connections Act's statutory requirement that mobile service providers separate the line of a survivor of domestic violence (and other related crimes and abuse), and any individuals in the care of the survivor, from a mobile service contract shared with an abuser within two business days after receiving a request from the survivor. We also seek comment on a proposal to require service providers to omit from consumer-facing logs of calls and text messages any records of calls or text messages to hotlines listed in a central database of hotlines that the Commission would create. We also seek comment on whether to designate the Lifeline program or the Affordable Connectivity Program as a means for providing survivors suffering financial hardship with emergency communications support for up to six months, as required by the Safe Connections Act.

DATES: Comments are due on or before April 12, 2023, and reply comments are due on or before May 12, 2023. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 12, 2023.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 22–238, 11–42, and 21–450, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

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

FOR FURTHER INFORMATION CONTACT: Travis Hahn, Wireline Competition Bureau, Telecommunications Access Policy Division, at *Travis.Hahn@fcc.gov* or Chris Laughlin, Wireline Competition Bureau, Competition Policy Division, at *Chris.Laughlin@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole On'gele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in WC Docket Nos. 22–238, 11–42, and 21–450, adopted on February 16, 2023 and released on February 17, 2023. The full text of this document is available at *https://docs.fcc.gov/public/attachments/FCC-23-9A1.pdf.* To request materials in accessible formats for people with disabilities (*e.g.*, braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.*, accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

The proceeding this document initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce

paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due May 12, 2023. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

I. Notice of Proposed Rulemaking

1. Reliable, safe, and affordable connectivity is critical to survivors leaving a relationship involving domestic violence, human trafficking, and other related crimes or abuse. This connectivity can assist survivors in breaking away from their abusers and finding and maintaining contact with safe support networks, including family and friends. Survivors whose devices and associated telephone numbers are part of multi-line or shared plans (commonly referred to as ''family plans''), however, can face difficulties separating lines from such plans and maintaining affordable service. Further, having access to an independent phone or broadband connection is important for survivors to be able to communicate and access other available services without fear of their communications, location, or other private information being revealed to their abusers.

2. In this Notice of Proposed Rulemaking (*NPRM*), we continue the work we initiated in July of last year to support the connectivity needs of survivors. Specifically, we begin the process of implementing the Safe Connections Act of 2022 (Safe Connections Act), enacted this past December, which provides important statutory support for specific measures to benefit survivors. We seek comment on proposed rules that would help survivors separate service lines from accounts that include their abusers, protect the privacy of calls made by survivors to domestic abuse hotlines, and support survivors that pursue a line separation request and face financial hardship through the Commission's affordability programs. We believe that these measures will aid survivors who lack meaningful support and communications options when establishing independence from an abuser.

A. Separation of Lines From Shared Mobile Service Contracts

3. In this section, we propose new rules to codify and implement the line separation provisions in the Safe Connections Act. Our proposed rules largely track the statutory language, with some additional proposals and requests for comment concerning other issues that may be implicated by line separations.

1. Definitions

4. We propose to adopt in our rules the definitions of the terms listed in new section 345 of the Communications Act, as added by the Safe Connections Act, including ''covered act,'' ''survivor,'' ''abuser,'' ''covered provider,'' ''shared mobile services contract,'' and ''primary account holder.'' We seek comment on each proposed definition and invite commenters to address our specific questions below.

5. *Covered Act.* We propose to define ''covered act'' as conduct that constitutes (1) a crime described in section 40002(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a)), including, but not limited to, domestic violence, dating violence, sexual assault, stalking, and sex trafficking; (2) an act or practice described in paragraph (11) or (12) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102) (relating to severe forms of trafficking in persons and sex trafficking, respectively); or (3) an act under State law, Tribal law, or the Uniform Code of Military Justice that is similar to an offense described in clause (1) or (2) of this paragraph. Our proposed definition is identical to the term as defined in the Safe Connections Act, except that we propose to add the clause ''but not limited to'' in describing the crimes covered by the first clause. Section 40002(a) of the Violence Against Women Act of 1994 describes a number of crimes and abuses in addition to those crimes enumerated in the Safe Connections Act's definition of ''covered act,'' including abuse in later life, child abuse and neglect, child maltreatment, economic abuse, elder abuse, female genital mutilation or cutting, forced marriage, and technological abuse. Although the Safe Connections Act describes a covered act as ''a crime described'' in section 40002(a) of the Violence Against Women Act ''including domestic violence, dating violence, sexual assault, stalking, and sex trafficking,'' it does not say that *only* those listed crimes may be included. We believe the best reading of the definition of ''covered act'' in the Safe Connections Act includes all crimes listed in section 40002(a); we see no reason why Congress would choose to protect only a subset of survivors of these crimes. We believe the second clause of the definition of ''covered act'' in the Safe Connections Act, which identifies specific subsections (''an act or practice *described in paragraph (11) or (12)* of section 103 of the Trafficking Victims Protection Act of 2000'') also supports our analysis because in contrast, the first clause of the definition of ''covered act'' does not limit the definition to specific subsections of section 40002(a) of the Violence Against Women Act. We seek comment on this proposed analysis. How should the fact that the Safe Connections Act specifically mentions ''[d]omestic violence, dating violence, stalking, sexual assault, human trafficking, and related crimes'' in its findings in section 3, while not mentioning the other crimes and abuses listed in section 40002(a) of the Violence Against Women Act, factor into our analysis? To what extent can we include in our definition abuses described in section 40002(a) of the Violence Against Women Act that may not be ''crimes'' under the statute?

6. We seek comment on whether, instead of mirroring the statutory language in our definition of ''covered act,'' the Commission's rules should list out the crimes identified in section 40002(a) of the Violence Against Women Act of 1994 and paragraph (11) or (12) of section 103 of the Trafficking Victims Protection Act of 2000. Would such an approach help provide additional clarity of the scope of the Safe Connections Act's protections for covered providers and survivors? Would adopting such a rule run the risk of our rules becoming inconsistent with statutory intent if Congress revises either of those statutes in the future?

7. Finally, consistent with the Safe Connections Act, we propose that a criminal conviction or any other

determination of a court shall not be required for conduct to constitute a covered act. We seek comment on our proposal. The Safe Connections Act separately addresses the evidence needed to establish that a covered act has been committed or allegedly committed. We address those requirements below.

8. *Survivor.* We propose to define ''survivor'' as an individual who is not less than 18 years old and (1) against whom a covered act has been committed or allegedly committed; or (2) who cares for another individual against whom a covered act has been committed or allegedly committed (provided that the individual providing care did not commit or allegedly commit the covered act), mirroring the Safe Connections Act's definition of ''survivor.'' We seek comment on our proposal. Are there other situations or circumstances in which an individual should be considered a ''survivor'' under our rules, and if so, under what authority would we expand that definition?

9. We seek comment on how we should interpret the Safe Connections Act's language describing a survivor as an individual ''who cares for another individual'' against whom a covered act has been committed or allegedly committed, to provide guidance to both covered providers and survivors. We observe that the statutory language is broad—Congress did not limit this provision to only those situations in which an individual is providing care to family members, minors, dependents, or those residing in the same household, when it could have chosen to do so. It also did not provide direction on how to otherwise determine when an individual is providing ''care'' for another individual. Should we define what it means to ''care for'' another person or what it means to be ''in the care of'' another individual, and if so, what should that definition be? Is there a common understanding of what it means to ''care for'' or be ''in the care'' of another person? Has the meaning of ''in the care of'' or a comparable phrase been defined elsewhere in statute or regulation that could appropriately be used for reference in the present context?

10. Absent a common understanding or similar definition to reference, we believe that at a minimum, this phrase should be understood to encompass any individuals who are part of the same household, including adult children, as well as adults who are older, and those who are in the care of another individual by valid court order or power of attorney. To support this interpretation, we tentatively conclude that ''household'' should have the same meaning as it does in § 54.400 of our rules. We seek comment on our proposed interpretation. Is there any reason to conclude that Congress intended this phrase to be interpreted more narrowly, for example, to include only those under the age of 18 for whom an individual is the parent, guardian, or caretaker? We tentatively conclude that the Safe Connections Act contemplates that an individual who is the parent, guardian, or caretaker of a person over the age of 18 qualifies as someone who provides care for another person and, thus, as a ''survivor'' when a covered act is committed against the person for whom the individual cares. Do commenters agree, or does the Safe Connections Act contemplate that any such persons over the age of 18 would be considered ''survivors'' in their own right? Would interpreting the Safe Connections Act, and our rules, in any of the ways we have discussed narrow or broaden the applicability of the protections in a way not intended by Congress? If we conclude that certain persons over the age of 18 can qualify as being in the care of another individual, should we permit those persons to object to their line being separated following a line separation request by the ''survivor'' who cares for them? If so, what sort of notice or opportunity to object must covered providers give to these users? We seek comment on how best to interpret this statutory language so as to provide the protections that Congress intended for individuals who are victims of a covered act.

11. *Abuser.* We propose to define ''abuser'' for purposes of our rules as an individual who has committed or allegedly committed a covered act against (1) an individual who seeks relief under section 345 of the Communications Act and the Commission's implementing rules; or (2) an individual in the care of an individual who seeks relief under section 345 of the Communications Act and the Commission's implementing rules, mirroring the substance of the Safe Connections Act. We seek comment on our proposal. Can commenters identify any reason to depart from the statutory definition of ''abuser''? We note that we do not intend our definition to serve as independent evidence of, or establish legal liability in regards to, any alleged crime or act of abuse, and propose to adopt this definition for purposes of implementing the Safe Connections Act only. We seek comment on this proposed approach.

12. *Covered Provider.* We propose to define ''covered provider'' as a provider of ''a private mobile service or commercial mobile service, as those terms are defined in 47 U.S.C. 332(d),'' consistent with the Safe Connections Act. We seek comment on our proposal. Section 332(d) defines ''commercial mobile service'' as ''any mobile service (as defined in [47 U.S.C. 153]) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission,'' and defines ''private mobile service'' as ''any mobile service (as defined in [47 U.S.C. 153]) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.''

13. We tentatively conclude that covered providers would include both facilities-based mobile network operators, as well as resellers/mobile virtual network operators. We seek comment on this tentative conclusion. We also seek comment on whether Congress intended the line separation obligation to apply to all providers of commercial mobile service or private mobile service, as the Commission might interpret and apply those definitions, regardless of underlying technology used to provide the service (*e.g.,* whether provided through land, mobile, or satellite stations). We further seek comment on whether we should interpret the statutory definition of ''covered provider'' to include providers of mobile broadband service that do not also offer mobile voice service, and if so, whether implementation of the line separation obligation would differ for those providers. If so, how would it differ?

14. *Shared Mobile Service Contract.* We propose to define ''shared mobile service contract'' as a mobile service contract for an account that includes not less than two lines of service and does not include enterprise services offered by a covered provider. We seek comment on our proposal, which mirrors the Safe Connections Act's definition except insofar as it replaces the phrase ''not less than 2 consumers'' with ''not less than two lines of service.'' It is our understanding that mobile service contracts are typically structured around the number of *lines of service* associated with an account rather than the number of *consumers.* We invite comment on this proposal. We tentatively conclude that a ''line'' includes all of the services associated with that line under the shared mobile

service contract, regardless of their classification, including voice, text, and data services, and we seek comment on this tentative conclusion. We also tentatively conclude that a ''line of service'' under a shared mobile service contract is one that is linked to a telephone number, even if the services provided over that line of service are not voice services. We seek comment on our analysis, and whether we should provide additional guidance on the bounds of ''line of service'' in implementing the Safe Connections Act.

15. If we do not interpret ''consumers'' to mean ''lines,'' as proposed, we seek comment on how providers would verify the number of consumers on an account. Would requiring covered providers to verify the number of consumers rather than the number of lines possibly hamper a survivor's ability to obtain a line separation? If we keep the statutory terminology of ''consumers,'' would there be additional privacy concerns, *e.g.,* because covered providers would have to collect information about the additional consumers on shared mobile service contracts (including minors who may use the line) other than the primary account holder? How burdensome would such additional information collection requirements be for covered providers, particularly small providers?

16. We tentatively conclude that ''shared mobile service contract'' includes mobile service contracts for voice, text, and data services offered by covered providers, as well as both pre-paid and post-paid accounts, to the extent that a service contract exists. We seek comment on these tentative conclusions. Do covered providers offer pre-paid contracts for accounts that include at least two lines?

17. We observe that the definition of ''shared mobile service contract'' explicitly excludes ''enterprise services.'' We tentatively conclude that enterprise services generally entail those products or services specifically offered to entities to support and manage business operations, which may provide greater security, integration, support, or other features than are ordinarily available to mass market customers, and would exclude services marketed and sold on a standardized basis to residential customers and small businesses. Do commenters agree? We believe interpreting the exclusion for ''enterprise services'' in this way would address the needs of survivors who use a line on a shared mobile service contract that may be structured under a family-run small business or paid for by a business account owned by the abuser, for example. We seek comment on our approach, and whether we should define ''enterprise services'' differently to address the needs of survivors.

18. *Primary Account Holder.* We propose to define ''primary account holder'' as ''an individual who is a party to a mobile service contract with a covered provider,'' mirroring the definition in the Safe Connections Act. We seek comment on our proposal, and whether there are any considerations that should cause us to depart from the statutory definition. Are there situations in which there is more than a single individual who is party to a mobile service contract?

2. Requirement To Separate Lines Upon Request

19. *Processing of Line Separation Requests.* Consistent with the Safe Connections Act, for shared mobile service contracts under which a survivor and abuser each use a line, our proposed rule would require covered providers, not later than two business days after receiving a completed line separation request from a survivor, to (1) separate the line of the survivor, and the line of any individual in the care of the survivor, from the shared mobile service contract, or (2) separate the line of the abuser from the shared mobile service contract.

20. Because the Safe Connections Act requires covered providers to implement line separation requests from survivors for shared mobile service contracts ''under which the survivor and the abuser each *use a line,*'' we propose to interpret this statutory language to mean that neither the abuser nor the survivor needs to be the primary account holder for a line separation to be effectuated, regardless of whose line is separated from the account. We also believe that a person who does not use a line on an account—but is a ''survivor'' under the statute because the person is someone who cares for another individual against whom a covered act has been committed or allegedly committed—would be able to request a line separation because the definition of ''survivor'' allows that person to stand in for the individual in their care. Additionally, we also believe that the structure of the Safe Connections Act gives survivors discretion to request separation from the account of either the line of the survivor (and the lines of any individuals in the survivor's care) or the line of the abuser, but we seek comment on whether the covered provider also retains the discretion to determine whether to separate the line of the abuser or the line(s) of the survivor. We seek comment on our proposed interpretations, and on their potential implications and challenges. For instance, what implementation challenges will covered providers face, if any, if the survivor seeks to remove the abuser from the account but neither the survivor nor the abuser is the primary account holder? Do covered providers have existing processes to remove a primary account holder from an account and designate another user as the primary account holder, such as following the death of a primary account holder, that could be applied if the survivor seeks to remove the abuser from the account and the abuser is the primary account holder?

21. The Safe Connections Act requires covered providers, upon receiving a completed line separation request from a survivor, to separate the line of the survivor and the line of any individual in the care of the survivor. As with the definition of ''survivor,'' the Safe Connections Act does not explain how to determine who qualifies as ''in the care of'' the survivor for the purposes of line separation requests. We believe that we should adopt the same approach for making this determination as we do for interpreting the definition of ''survivor.'' Unlike the definition of ''survivor,'' however, we believe that for the purposes of line separation requests, an individual ''in the care'' of a survivor need not be someone against whom a covered act has been committed or allegedly committed. As previously discussed, the Safe Connections Act defines ''survivor'' as including an individual at least 18 years old who ''cares for another individual *against whom a covered act has been committed or allegedly committed*,'' but it requires covered providers to separate the lines of both the survivor and ''*any individual* in the care of the survivor,'' upon request of the survivor. We propose to interpret these provisions to mean that a covered provider must separate the lines, upon request, of any individuals in the care of survivors (however that is defined) without regard to whether a covered act has been committed or allegedly committed against the individuals in the care of the survivor. We seek comment on our proposed interpretation of these provisions.

22. Under the Safe Connections Act, covered providers must effectuate line separations not later than two business days after receiving a completed line separation request from a survivor. We tentatively conclude covered providers should have two full business days following the day the request was made to complete a line separation request, which aligns with the Commission's

rules governing computation of time related to Commission actions. Should we adopt another meaning for what constitutes two business days, such as 48 hours from the time the request was made for requests made during business hours, and 48 hours from the start of the next business day for requests not made during business hours? Should we encourage covered providers to effectuate separations in less than two business days, if feasible? We seek comment on whether we should establish a time limit or other guidelines for how long covered providers have to determine whether a line separation request is incomplete. Because line separation requests may be time sensitive, we believe that, if feasible, covered providers should review requests to make this determination promptly, and ideally make this determination and either effectuate a line separation or reject an incomplete request within the two business day timeframe established by the statute. We believe this will enable survivors to quickly take steps to correct errors or submit a new request, if appropriate. Once a covered provider determines a request is complete and that there is no other basis for rejection, we believe the statute is clear that the provider has no more than two business days, however that is calculated, to effectuate the request, and we seek comment on this conclusion.

23. We also seek comment on the reasons covered providers may reject a request and what survivors can do upon receiving a rejection. At a minimum, we expect that covered providers may reject a request because the provider was unable to authenticate that the survivor is the user of the specified line, the request is missing required verification information or documentation, information or documentation submitted by the survivor is invalid, or the line separation is operationally or technically infeasible by the provider. We believe that any corrections, resubmissions, or selected alternatives for obtaining a line separation should be processed within the two-business-day timeframe established by the Safe Connections Act. We seek comment on how to balance our interest in allowing survivors to make repeated requests to obtain a line separation with our interest in preventing fraud on multiline shared accounts. Should we require covered providers to establish procedures for determining whether repeated requests are fraudulent and decline to effectuate line separations in those instances?

24. *Operational and Technical Infeasibility.* Under the Safe Connections Act, covered providers who cannot operationally or technically effectuate a line separation request are relieved of the obligation to effectuate line separation requests. Because this provision specifies that covered providers are only relieved of the ''requirement to *effectuate* a line separation request,'' we believe that all covered providers must offer the ability for survivors to *submit* requests for line separations described in the statute even if the provider may not be able to effectuate such separations in all instances. We seek comment on this interpretation.

25. We seek comment to understand what operational and technical limitations covered providers may face. We expect that many covered providers already have processes in place to effectuate line separations and seek comment on this belief. We tentatively conclude that any line separation a covered provider can complete within two business days under its existing capabilities, as those may change over time, would not be operationally or technically infeasible under the Safe Connections Act. We also believe that the Safe Connections Act requires covered providers to take all reasonable steps to effectuate any line separation requests they receive in accordance with the statute and the rules we adopt, and we seek comment on how we would determine whether the steps taken meet this standard. Must covered providers change their policies and procedures and invest in equipment and technology upgrades to be able to effectuate all or a greater number of line separations? Should we instead simply define what circumstances qualify as operational and technical limitations and require covered providers to take steps to effectuate line separations in all other circumstances? We seek comment on the potential approaches, including their costs and burdens on covered providers, including small providers. Regardless of any requirements we establish, we recognize that there may be instances when operational and technical limitations prevent covered providers from effectuating the types of line separations established by the Safe Connections Act or from doing so precisely as the statute and our rules require. We believe that in these instances, the Safe Connections Act requires covered providers to provide the survivor with alternatives to submitting a line separation request, including starting a new line of service. We also believe that in these circumstances, covered providers should offer, allow survivors to elect, and effectuate any alternative options that would allow survivors to obtain a line separation. For instance, some covered providers may not be able to separate an abuser's line from an account if the abuser is the primary account holder, but would be able to separate the survivor's line from the account. Likewise, some covered providers may be capable of processing line separation requests, but not in the middle of a billing cycle.

3. Submission of Line Separation Requests

26. *Information Required to Process Line Separation Requests.* The Safe Connections Act requires that survivors submit to covered providers certain information with their line separation requests, and we propose to codify those requirements in our rules. First, under our proposed rule, a survivor submitting a line separation request must expressly indicate that the survivor is requesting relief from the covered provider under section 345 of the Communications Act and our rules and identify each line that should be separated. In cases where a survivor is seeking separation of the survivor's line, the request must state that the survivor is the user of that specific line. In cases where a survivor is seeking separation of a line of an individual under the care of the survivor, the request must also include an affidavit setting forth that the individual is in the care of the survivor and is the user of that specific line. In support of efforts to deter fraud and abuse, we seek comment on whether we should mandate requirements for any affidavits that are submitted. At a minimum, we believe that affidavits should be signed and dated. Should they also be notarized? Can or must we rely on the alternative declaration mechanism provided for by 28 U.S.C. 1746? Should affidavits regarding individuals in the care of a survivor include the individual's name, relationship to the survivor, or other information? Are there privacy concerns with potentially requiring this additional information?

27. Consistent with the Safe Connections Act, we also tentatively conclude that when a survivor is instead requesting that a covered provider separate the line of the abuser from the shared mobile service contract, the line separation request should also state that the abuser is the user of that specific line. We seek comment on this tentative conclusion. Though not required under the Safe Connections Act, should we require that the line separation request include an affidavit that the abuser is the user of a specific line, rather than

just a statement? We seek comment on whether covered providers need any other information to effectuate line separation requests. Commenters should address any privacy concerns from requiring such additional information.

28. Because the Safe Connections Act requires that covered providers ''shall'' separate the lines requested by a survivor after receiving a completed line separation request, we believe that this statutory language is best read as requiring the covered provider to complete the line separation as long as the request provides the information required by the Safe Connections Act and our implementing rules, and the line separation is operationally and technically feasible. In other words, we do not believe that the Safe Connections Act *requires* covered providers to take any steps to separately verify the legitimacy of the information provided; we seek comment, however, on whether the statute permits them to do so, and if so, what the implications are for both covered providers and survivors. We seek comment on our proposed interpretation of this provision. What would be the benefits and drawbacks of such an approach?

29. The Safe Connections Act does not address whether or how covered providers should authenticate the identity of a survivor to ensure that a person making a line separation request is actually a user of a line on the account. We recognize that unless a survivor is the primary account holder, covered providers may have limited information about the survivor and therefore fewer methods to authenticate the survivor's identity. We also appreciate that many survivors may not be in a position to supply government issued identification or other official identifying information to covered providers for authentication purposes. We are concerned that, absent any form of authentication, line separation requests could be easily abused by bad actors with significant consequences to consumers, similar to instances of subscriber identify module (SIM) swap and port-out fraud. We note, however, that in response to the *Notice of Inquiry,* some commenters argued that maximizing the ability of survivors to access any benefits the Commission establishes should supersede fraud and abuse concerns, at least absent evidence of widespread fraud or abuse. We seek comment on the appropriate balance between these two competing public interests.

30. We seek comment on whether we should require covered providers to authenticate the identity of a survivor to verify that the survivor is actually the user of a line on the account before processing a line separation request. When the survivor is the primary account holder or a user designated to have account authority by the primary account holder (designated user), we believe covered providers should authenticate survivors just as they would any other primary account holder or designated user, and we seek comment on this proposal. If the survivor is not the primary account holder or a designated user, we seek comment on whether we should designate the forms of authentication that are appropriate for covered providers to use for line separation requests, and if so, which forms of authentication we should designate. We believe in this particular context that SMS text-based and app-based authentications could be useful because they rely on the user having access to the device associated with the line. We also seek comment on whether call detail information could be a viable alternative in these circumstances because it requires knowledge of call history by the user. Are there other authentication methods that would be both feasible for survivors and secure? We observe that some comments received in response to our 2021 *SIM Swap and Port-Out Fraud NPRM* discussed security shortcomings of these and other authentication mechanisms, and several commenters in that proceeding urged us to give providers flexibility in deciding which forms of authentication to use to reduce costs and burdens and avoid creating a roadmap for bad actors. To what extent should the concerns raised in that proceeding guide our decision making here? Should we allow covered providers flexibility to determine which forms of authentication to offer? If so, should we require covered providers to offer multiple forms of authentication and give survivors the opportunity to authenticate using any method available? How burdensome would it be for covered providers if we were to require them to authenticate that survivors are users of a line on a shared mobile account, particularly for small providers? How burdensome would such a requirement be on survivors seeking line separation requests, and would such requirements be consistent with Congressional intent? Finally, we seek comment on how any authentication process we establish for line separations should intersect with any identity verification process survivors must undergo to access the designated program.

31. We recognize that covered providers may require additional information to assign the survivor as a primary account holder. Beyond the information already discussed, what information would covered providers need from survivors to establish them as primary account holders? We note that certain information, like full residential address, billing address, Social Security Number, and financial information can be extremely sensitive or difficult to provide for survivors that may be trying to physically and financially distance themselves from their abusers. Residential address information can be particularly problematic because survivors may not be residing at one location or have a fixed address, and if any address information is exposed, it may allow an abuser to locate a survivor. If a survivor is unable to provide all the information that is typically required to establish a primary account holder, should we require covered providers to modify the information necessary to accommodate survivors? If so, what information should we permit covered providers to require from survivors? If not, are there adequate alternative options for survivors to obtain needed communications services?

32. Additionally, although we appreciate that many survivors may have limited information about the abuser and the account associated with the mobile service contract, we seek comment on whether we should require survivors who are not the primary account holder to submit other information to ensure that line separations are being processed for the correct account and to minimize fraudulent line separations. We specifically seek comment on whether we should require survivors to submit one or more of the following pieces of information about the account or primary account holder even if the primary account holder is the abuser: account number, primary phone number associated with the account, zip code, address associated with the account, and PIN or password associated with the account.

33. *Documentation Demonstrating Survivor Status.* Consistent with the Safe Connections Act, our proposed rule would require survivors seeking a line separation to submit information that verifies that an individual who uses a line under the shared mobile service contract (*i.e.,* an ''abuser'') has committed or allegedly committed a covered act against the survivor or an individual in the survivor's care. To meet this requirement, survivors must submit one or more of the eligible

documents prescribed in the Safe Connections Act: (1) a copy of a signed affidavit from a licensed medical or mental health care provider, licensed military medical or mental health care provider, licensed social worker, victim services provider, or licensed military victim services provider, or an employee of a court, acting within the scope of that person's employment; or (2) a copy of a police report, statements provided by police, including military police, to magistrates or judges, charging documents, protective or restraining orders, military protective orders, or any other official record that documents the covered act. At a minimum, we believe that the documentation provided should clearly indicate the name of the abuser and the name of the survivor and make an affirmative statement indicating that the abuser actually or allegedly committed an act that qualifies as a covered act against the survivor or an individual in the care of a survivor. Are there circumstances in which a survivor would not be able to obtain documentation that provides this information? Should we require that the documentation include any additional identifying information about the abuser or the survivor, such as an address or date of birth? What potential privacy implications would such a requirement raise, and would requiring such information be consistent with the Safe Connections Act? As a way to minimize fraud and abuse of the line separation process, we believe that, to the extent the documentation includes identifying information about the abuser or the survivor, covered providers should confirm that the information matches any comparable identifying information in the covered provider's records when processing a line separation request. We also seek comment on whether we should set requirements for the timeliness of evidence showing a covered act was committed. For instance, should we require that documentation be dated, or show the covered act occurred within a certain period prior to the request? If so, how long? We seek comment on these potential approaches and whether they are consistent with the Congressional intent of the Safe Connections Act.

34. We acknowledge that survivors may have difficulty securing the documents specified by the Safe Connections Act to demonstrate that an individual using a line on a shared mobile service contract has committed or allegedly committed a covered act, or doing so in a timely manner. In the *Notice of Inquiry,* we asked whether allowing survivors to submit an affidavit regarding their survivor status would provide sufficient verification and whether we should permit other options if a survivor cannot obtain the required documents. Some commenters expressed support for survivor affidavits and also argued that survivors should be permitted to submit affidavits from other qualified third parties not prescribed in the Safe Connections Act, such as shelters and advocacy organizations. Notwithstanding the foregoing, the Safe Connections Act, which was adopted by Congress after the *Notice of Inquiry,* clearly specifies the documents survivors can submit to demonstrate survivor status while specifically preserving the right of states to set less stringent requirements. We seek comment on whether the Safe Connections Act permits the Commission to establish other forms of verification that a survivor can submit, and if so, whether we should permit other forms of verification.

35. As discussed above, we believe that the Safe Connections Act is best read as requiring covered providers to complete a line separation as long as the line separation request provides the statutorily required information, without requiring covered providers to separately verify the information provided. We recognize that many covered providers may not have the expertise to determine the authenticity of such documents and that it would undermine the goals of the Safe Connections Act if a covered provider denied a line separation based on an incorrect determination that verification documents submitted by a survivor are not authentic. Nonetheless, we seek comment on whether and to what extent we should require or permit covered providers to validate the authenticity of any documents meant to verify survivor status that they receive in order to minimize the avenues that bad actors can use to commit fraud through the line separation process.

36. Finally, we propose to include in our rules the Safe Connections Act's proviso that section 345 of the Communications Act (establishing the line separation process) ''shall not affect any law or regulation of a State providing communications protections for survivors (or any similar category of individuals) that has less stringent requirements for providing evidence of a covered act (or any similar category of conduct) than this subsection,'' and seek comment on our proposal.

37. *Election of the Manner of Communication from Covered Providers.* Under the Safe Connections Act, a covered provider must ''allow the survivor to elect in the manner in which the covered provider may—(i) contact the survivor, or designated representative of the survivor, in response to the request, if necessary; or (ii) notify the survivor, or designated representative of the survivor, of the inability of the covered provider to complete the line separation.'' We propose to codify this requirement in our rules and seek comment on how best to understand it. We tentatively conclude that this requirement simply obligates covered providers to allow survivors to select, at the time they are submitting a line separation request, the manner the covered provider must use to communicate with a survivor after the survivor submits the request. We further believe that covered providers must ask survivors to provide the appropriate contact information with their request, and, if applicable, their designated representative. We seek comment on these tentative conclusions.

38. *Confidential and Secure Treatment of Personal Information.* We propose to require covered providers, including any officers, directors, and employees—as well as covered providers' vendors, agents, or contractors that receive or process line separation requests with the survivor's consent, or as needed to effectuate the request—to treat any information submitted by a survivor as part of a line separation request as confidential and securely dispose of the information not later than 90 days after receiving the information, consistent with the Safe Connections Act. Our proposal mirrors the Safe Connections Act, except that we propose to clarify that ''vendor'' as used in the Safe Connections Act includes ''contractors'' who may receive line separation requests in their provision of services to covered providers. We believe that this interpretation of ''vendor'' reflects the business practices of covered providers and will mitigate privacy risks to survivors. We seek comment on our proposal.

39. The Safe Connections Act requires confidential treatment and disposal of information submitted by a survivor ''[n]otwithstanding section 222(c)(2)'' of the Communications Act, which in turn requires telecommunications carriers to ''disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.'' The Communications Act defines ''customer proprietary network information'' (or CPNI) as ''information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service

subscribed to by a customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship,'' and ''information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier,'' but does not include subscriber list information. Thus, to the extent that any information a survivor submits as part of a line separation request would be considered CPNI, we believe the Safe Connections Act requires that such information (as well as information submitted by a survivor that would not be considered CPNI) should be treated confidentially and disposed of securely. We seek comment on our analysis. How should we implement the Safe Connections Act's requirement that information submitted by survivors be treated as confidential and be securely disposed of ''[n]otwithstanding section 222(c)(2) of the [Communications] Act''?

40. We seek comment on how we should interpret the requirement that covered providers treat information submitted by survivors as ''confidential,'' and what requirements, if any, we should impose to ensure such information is disposed of ''securely.'' We are mindful that requiring and identifying specific data protection mechanisms can provide a roadmap to bad actors and may also be overtaken by new technological advancements. Given that, what guidance can we provide to covered providers as to what would be considered ''confidential'' treatment and ''secure'' disposal under the Safe Connections Act? At a minimum, we believe that treating such information as confidential means not disclosing or permitting access to such information except as to the individual survivor submitting the line separation request, anyone that the survivor specifically designates, or specific types of third parties (*i.e.,* vendors, contractors, and agents) as needed to effectuate the request. Do commenters agree? Are there other specific actions we should require covered providers to take or not take to ensure that information remains confidential? For instance, should we require covered providers to maintain line separation request information in a separate database or restrict employee access to only those who need access to that information to effectuate the request? Should we require such information to be stored with encryption? Can we construe the obligation on providers to ''treat'' information submitted in connection with a line separation request as ''confidential'' to include an obligation not to use or process such information for certain purposes (*e.g.,* marketing)? If so, what should be permissible purposes for the use or processing of such information, other than effectuating the request, if any? What mechanisms, if any, should we require covered providers to use to ensure that confidential information is disposed of securely? How burdensome would any such requirements be on covered providers, particularly small providers? Should unauthorized disclosure of, or access to, information submitted by survivors as part of a line separation request be considered evidence that a covered provider does not treat such information confidentially?

41. Consistent with the Safe Connections Act, we also propose to make clear that the requirement to securely dispose of information submitted by a survivor within 90 days does not prohibit a covered provider from maintaining a record that verifies that a survivor fulfilled the conditions of a line separation request for longer than 90 days. We believe that the best interpretation of this provision presumes that any such records will not contain any information submitted by survivors, which, as discussed, would be deemed confidential and subject to secure disposal within 90 days. Nonetheless, we propose that covered providers also treat such records as confidential and securely dispose of them. We seek comment on our proposals. Should we require covered providers to dispose of the records verifying the fulfillment of a line separation request within a certain timeframe, and if so, what would be an appropriate timeframe? Are there reasons why a covered provider, or a survivor, would need to retain such records of fulfilling the conditions of a line separation request, beyond their potential need for enrollment in the designated program providing emergency communications support?

42. *Means for Submitting Line Separation Requests.* The Safe Connections Act directs covered providers to ''offer a survivor the ability to submit a line separation request . . . through secure remote means that are easily navigable, provided that remote options are commercially available and technically feasible.'' We propose to codify this requirement in our rules and seek comment on how to implement it.

43. Although the Safe Connections Act does not define what constitutes ''remote means,'' we tentatively conclude that it is a mechanism for submitting a line separation request that does not require the survivor to interact in person with an employee of the covered provider at a physical location. We seek comment on this tentative conclusion. For example, we believe that requiring a visit to a brick and mortar store would not constitute remote means. Conversely, we believe that a form on a covered provider's website with the ability to input required information and attach necessary documents would constitute a remote means. We also believe that submissions via email, a form on a provider's mobile app, a chat feature on a provider's website, interactive voice response (IVR) phone calls, and postal mail would constitute remote means. Would a live telephone interaction, text message communication, or video chat with a customer service representative constitute remote means as contemplated by the Safe Connections Act? We seek comment on our proposed analysis of what constitutes remote means. In identifying permissible remote means, should we take into consideration whether the means are consistent with or similar to the means survivors must use to apply for the designated program discussed below to minimize the burdens on survivors? We note that any remote means must permit survivors to submit any necessary documentation, although we seek comment on whether covered providers should be able to offer means that allow or require survivors to initiate a request using one method (such as an IVR phone call) and submit the documentation through another method (such as via email). We also seek comment on whether we should require providers to accept documentation in any format, including, for example, pictures of documents or screenshots. In addition, we tentatively conclude that the Safe Connections Act would permit covered providers to offer survivors means that are not considered remote so long as the provider does not require survivors to use those non-remote means or make it harder for survivors to access remote means than to access non-remote means.

44. The Safe Connections Act requires covered providers to offer remote means for submitting line separation requests only if such means are ''technically feasible'' and ''commercially available.'' As a general matter, are there remote means for survivors to submit line separation requests that are technically feasible to implement and commercially available for all covered providers, including small providers? If so, which ones? If not, what steps must covered providers, including small providers, take to make remote means technically

feasible or how long before they are commercially available? Relatedly, how long will it take covered providers to select, implement, test, and launch remote means for line separation requests, and how does that timeline differ depending on the potential requirements we discuss above? Can covered providers adopt or modify existing systems that they use in other aspects of their business to provide survivors the ability to submit remote requests? Additionally, what are the costs associated with this process and the varying alternative requirements, and do they differ for small providers?

45. The Safe Connections Act requires that the means of submission, in addition to being remote, must be ''secure,'' and we seek comment on the meaning of this term. We tentatively conclude that *any* means a covered provider offers survivors to submit a line separation request, including non-remote means, must be secure, and seek comment on our tentative conclusion. We believe that, at a minimum, secure means are those that prevent unauthorized access to or disclosure of the information and documentation submitted with the line separation request during the submission process. Should we define what would constitute ''secure'' in greater detail—and if so, how—or should we allow covered providers flexibility to adopt means they deem ''secure''? Specifically, should we require that any electronic means of submission use encrypted transmission? Are there particular means that we should deem to be unsecure in all instances? As with the Commission's CPNI rules, should unauthorized disclosure of, or access to, information submitted as part of a line separation request be considered evidence that a covered provider does not provide a ''secure'' means of transmission?

46. The means of submitting a request must also be ''easily navigable,'' and we invite comment on the meaning of this phrase. As an initial matter, we tentatively conclude the means for submitting a request must be easily navigable for individuals with disabilities, and we seek comment on this tentative conclusion. Does easily navigable also mean that any user interface or forms related to line separation requests must be easy for survivors to comprehend and use? Does it also mean that any user interface or form must clearly identify the information and documentation that a survivor must include with their request and that survivors must be able to easily insert or attach that information? Should we develop and mandate a standardized form that covered providers must use or direct stakeholders to work together to develop such a form? Additionally, does the phrase ''easily navigable'' place an obligation on covered providers to make the means of making a line separation request easily findable and accessible by survivors?

47. We seek comment on whether we should adopt additional requirements concerning the mechanisms for submitting line separation requests to ensure that all survivors have the ability to submit such requests and can obtain line separation in a timely manner. To what extent should covered providers be required to make available remote means that are accessible to individuals with disabilities? Does the Twenty-First Century Communications and Video Accessibility Act (CVAA) already require that all or certain means for submitting line separation requests be accessible for individuals with disabilities? To what extent should the means through which a covered provider permits survivors to submit line separation requests be made available in the languages in which a covered provider advertises its services? Should the means covered providers make available for submitting line separation requests ask survivors for their preferred language from among those in which the covered provider advertises? Additionally, we invite feedback on whether we should require covered providers to offer more than one means to submit a line separation request and ensure any such additional means address the needs of survivors who may be using different technologies or who may have different levels of digital literacy. Alternatively, should we designate one specific mean or process that all covered providers must offer to fulfill these obligations, such as a form on the provider's website, but also allow covered providers to offer other additional means or processes if they so choose? We seek comment on how costly and burdensome any such requirements would be for covered providers, particularly small providers.

48. Given the difficult circumstances that survivors may be experiencing at the time they make a line separation request, we believe that providers should make it easy for survivors to choose the best communications service offerings for their needs. Accordingly, we seek comment on whether we should require covered providers to allow survivors to indicate their service choices when they are submitting a line separation request. If so, we seek comment on what constitutes the full scope of service options covered providers should be required to offer to survivors, but tentatively conclude that the Safe Connections Act makes clear that survivors can seek to: (1) start a new line of service; (2) keep the existing service plan, with the abuser's line separated from the account; (3) select a new plan from among all commercially available plans the covered provider offers for which the survivor may be eligible, including any prepaid plans; (4) obtain benefits through the designated program if available through the provider; (5) switch providers by porting the lines of the survivor and anyone on the survivor's account to a new provider selected by the survivor, if technically feasible; and (6) move the line to an existing account of another person with service from the covered provider. What are the pros and cons of our proposed approach? For example, would this requirement maximize the simplicity for survivors navigating the line separation process? Conversely, how burdensome would this requirement be on covered providers, particularly small providers? Are there commercially available tools that would allow covered providers to implement this requirement? Is such a requirement otherwise technically feasible?

49. *Assistance with Completing Line Separation Requests.* While the Safe Connections Act requires covered providers to effectuate line separations after receiving a completed line separation request from a survivor, we observe that it permits survivors to indicate a designated representative for communications regarding line separation requests. Does the Safe Connections Act permit survivors to rely on assistance from their designated representative or other individuals, such as employees of victim service providers, to prepare and submit line separation requests? If not, why not, and practically speaking, how would covered providers know whether a survivor relied on such assistance? If the Safe Connections Act does allow such assistance, should we establish guidelines regarding this practice? For example, should we require those assisting survivors to include in the request their name and relationship to the survivor, along with a statement that the person assisted the survivor? If so, should we require providers to request this information through the means they make available for survivors to submit requests? What would be the costs to covered providers of any such requirements, particularly for smaller providers?

4. Notices, Notifications, and Other Communications

50. We next seek comment on the types of information that must or should be communicated to survivors and other consumers, and on the ways covered providers may convey this information. We believe the Safe Connections Act contemplates three ways that covered providers may communicate information to survivors: (1) a notice that must be made readily available to all consumers through the covered providers' public-facing communication avenues, such a notice on a provider's website (Notice to Consumers); (2) information that must be provided at the time a survivor is submitting a line separation request, such as in the instructions for submitting a line separation request or on the form used for submitting a request (Concurrent Notice to Survivors); and (3) notifications that must be delivered to survivors after they submit a line separation request, such as in a confirmation email for the line separation submission or a later follow-up message regarding the status of the submission (Post-Request Notifications).

51. *Notice to Consumers.* Recognizing that the ability to separate a line from a shared mobile account will only assist those survivors who are aware of the option, the Safe Connections Act requires covered providers to ''make information about the options and process'' for a line separation request ''readily available to consumers: (1) on the website and the mobile application of the provider; (2) in physical stores; and (3) in other forms of public-facing consumer communication.'' We propose to adopt these requirements in our rules as a Notice to Consumers, and seek comment on our proposal and its implementation, including the burdens on covered providers.

52. We seek comment on the specific methods and processes covered providers should use to provide the Notice to Consumers, and on the costs and burdens associated with each of these proposed requirements, particularly for small providers. First, we seek comment on whether we should provide additional guidance to covered providers regarding how to make the notice readily available to consumers ''on the website and mobile application of the provider.'' For example, should we provide guidance regarding where and how this information should be made available on covered providers' websites and mobile applications? Should we specifically require covered providers to post a link to the notice on their website homepage or mobile application home screen? Would a prominent link under a ''customer service'' page or ''support'' section of a covered provider's website be ''readily available''? Should we allow covered providers to determine the most appropriate method for making the notice available, as long as it is prominent and easy for consumers to locate?

53. Second, we seek comment on whether we should provide additional guidance to covered providers as to how they should make the Notice to Consumers readily available in ''physical stores.'' For example, does this language require covered providers to furnish information only upon consumer request? Or should we require covered providers to post prominent signage and/or have handouts explaining availability of the line separation option? At a minimum, we believe any flyers, signage, or other handouts should be clearly visible to consumers and easy to understand and access. We also tentatively conclude that covered providers should provide the notice in all languages in which the provider advertises within that particular store and on its website, and seek comment on this tentative conclusion.

54. Third, we seek comment on how covered providers should implement the requirement to provide the Notice to Consumers through ''other forms of public-facing consumer communication.'' What other forms of public-facing communication do covered providers employ? Would covered provider bills, advertisements, emails, or social media accounts be covered under this category? If so, how should covered providers make the notice readily available through these avenues or other potential public awareness campaigns? We seek comment on what specific methods will be most effective in helping covered providers disseminate information to consumers about line separation availability.

55. We also seek comment on whether we should specify what information covered providers must include in the Notice to Consumers ''about the options and process'' for line separation requests or whether we should instead allow covered providers to determine what information to include. If we should prescribe the content of the notice, what information would be most useful to consumers? We tentatively conclude we should require covered providers to inform consumers that the Safe Connections Act does not permit covered providers to make a line separation conditional upon the imposition of penalties, fees, or other requirements or limitations, and seek comment on this tentative conclusion. Should we require covered providers to inform consumers about who qualifies as a survivor and how a survivor can request a line separation, or to explain any operational or technical limitations for completing line separation requests and alternative options survivors can choose to obtain a line separation? Should we require covered providers to inform consumers of the service options that may be available to them, or what their financial responsibilities will be after a line separation?

56. Although the Safe Connections Act does not require covered providers to include information regarding the designated program in the Notice to Consumers, we tentatively conclude that they should include at least basic information concerning the availability of the designated program in the notice. Given that the Safe Connections Act requires covered providers to give survivors more detailed information about the designated program upon receiving a line separation request, do commenters agree with this approach? As we noted in our *Notice of Inquiry,* ''[s]urvivors often face severe financial hardship when attempting to establish financial independence from an abuser,'' and concerns about affordability could hold back some survivors from separating their line from an abuser's. We believe that requiring covered providers to include information about the availability of emergency communications support to help with the costs of a separated line in the Notice to Consumers may make the difference for some survivors in choosing whether or not to pursue a line separation, is consistent with the goals of the Safe Connections Act, and would be minimally burdensome for covered providers. We seek comment on our tentative conclusions and proposed approach. Are there other materials or information about line separation requests that would be beneficial for covered providers to share with survivors concurrently with the Notice to Consumers?

57. *Concurrent Notice to Survivors.* The Safe Connections Act requires a covered provider to notify a survivor seeking a line separation ''through remote means, provided that remote means are commercially available and technically feasible,'' and ''in clear and accessible language[,] that the covered provider may contact the survivor, or designated representative of the survivor, to confirm the line separation, or if the covered provider is unable to complete the line separation for any

reason.'' In addition to proposing that we codify this requirement in our rules, we seek comment on its meaning. We tentatively conclude that this requirement only establishes an obligation that a covered provider inform the survivor, at the time the survivor submits a line separation request, that the provider may contact the survivor, or the survivor's designated representative, to confirm the line separation or inform the survivor if the provider is unable to complete the line separation. We believe covered providers should inform survivors that the covered provider may contact the survivor as part of any instructional information provided at the time of a line separation request. To the extent feasible, we also believe this information should be provided proximate to the moment when the survivor is asked to provide contact information and elect the manner the provider must use for future communications. We believe that this approach will allow survivors to make an informed choice regarding which contact information and manner of communication is best given their particular circumstances. We seek comment on this tentative conclusion and approach. Is there any reason providers should instead provide this information to survivors in a Post-Request Notification? If yes, should we require that notification be delivered immediately upon submission of the request? Should we require providers to provide this information in both a Post-Request Notification and as a Concurrent Notice to Survivors? Regardless of how the information is delivered, should we allow or require covered providers to deliver it using the same means that the survivor used to submit the line separation request? Above, we tentatively conclude that covered providers may offer, and therefore that survivors may use, non-remote means to submit line separation requests. If a survivor submits a line separation request using non-remote means, does the statute allow us to, and should we, allow covered providers to deliver the required information via non-remote means, such as if the survivor consents, or must covered providers deliver the information via remote means?

58. *Post-Request Notifications.* As noted above, covered providers must allow survivors to select the manner in which a covered provider will communicate with the survivor about a submitted line separation request. We do not believe that covered providers must offer all manners of contact, but we do believe that covered providers must offer at least one manner of contact that is remote. Consistent with our tentative conclusion above regarding remote means of submitting line separation requests, we believe remote means of communication are those in which the covered provider does not require the survivor to interact in person with an employee of the provider at a physical location. We tentatively conclude that remote means of communication would include emails, text messages, pre-recorded voice calls, push notifications, in-app messages, and postal mail. We seek comment on this view. Are there other forms of communication that would qualify, such as live phone calls or video chats? We do not expect to prohibit covered providers from offering non-remote forms of communication. Given the potentially time-sensitive nature of line separation requests, we do not believe that covered providers should rely on communications methods that will not be delivered directly to survivors, such as notifications or messages that a survivor only may see upon logging into an online account. Additionally, we tentatively conclude that covered providers must deliver these communications in the survivor's preferred language if it is one in which the covered provider advertises. We seek comment on the costs associated with our proposed approach for covered providers, particularly for small providers.

59. The Safe Connections Act requires covered providers that receive a line separation request from a survivor to inform the survivor of the existence of the designated program that can provide emergency communications support to qualifying survivors suffering from financial hardship, who might qualify for the program, and how to participate in the program. We propose to codify this requirement and tentatively conclude that covered providers should have the flexibility to either provide this information in a Concurrent Notice to Survivors or a Post-Request Notification delivered immediately after a survivor submits a line separation request. We also seek comment on exactly what information covered providers must convey regarding the designated program. At a minimum, we expect that such material would specifically inform survivors that their participation in the designated program will be limited to six months unless they can qualify to participate in the designated program under the program's general eligibility requirements. We seek comment on whether we should direct the Universal Service Administrative Company (USAC), in coordination with the Wireline Competition Bureau (Bureau), to develop descriptions of the designated program and ways in which survivors might apply to the program, which we would share with covered providers to use for the required notice. What would be the costs to covered providers for these requirements, particularly for small providers?

60. We also propose to codify the requirement that a covered provider that cannot operationally or technically effectuate a line separation request must: (1) notify the survivor who submitted the request of that infeasibility, and (2) provide the survivor with information about other alternatives to submitting a line separation request, including starting a new line of service. We believe the statute clearly contemplates this will be delivered as a Post-Request Notification. We further believe that providers should explain, in this notification, the nature of the operational or technical limitations that are preventing the provider from completing the line separation as requested and any alternative options that would allow the survivor to obtain a line separation. We also believe that covered providers should be required to promptly notify survivors if a line separation request is rejected for any other reason. We seek comment on what information should be provided in rejection notifications, but at a minimum, we believe that covered providers should deliver a clear and concise notification that the request has been rejected with the basis for the rejection and information about how the survivor can either correct any issues, submit a new line separation request, or select alternative options to obtain a line separation, if available. The Safe Connections Act requires that covered providers deliver notifications regarding operational and technical infeasibility at the time of the request or for requests made using remote means, not later than two business days after the covered provider receives the request. We tentatively conclude that all rejection notifications should be delivered within the same timeframe. We further tentatively conclude that, if feasible, covered providers must deliver these notifications through the manner of communication selected by the survivor immediately after the covered provider receives the request. We seek comment on our proposed approach.

61. Finally, we seek comment on whether we should require covered providers to convey information to survivors regarding the service options that may be available to them in a Post-

Request Notification, as a Concurrent Notice to Survivors, or both. We also seek comment on whether we should require covered providers to inform survivors that they can choose between keeping the devices associated with both their line and the lines of individuals in their care if they assume any payment obligations for those devices or obtaining other devices to use with the services. If so, we believe covered providers should be capable of explaining remaining financial obligations for the devices and the costs and payment options for new devices the covered provider offers. We also believe that, given the sensitive and challenging circumstances survivors may be experiencing, we should require covered providers to minimize their communications to survivors and prohibit communications that are not directly related to the line separation request, such as marketing and advertising communications that are not related to assisting survivors with understanding and selecting service options. Do commenters agree? Are there other valid, but unrelated, reasons for which a provider may need to contact the survivor?

62. *Notification to Primary Account Holders and Abusers.* The Safe Connections Act contemplates that primary account holders may be notified regarding successful line separations on their accounts, and we believe this notification is likely necessary in most instances, given associated account changes that will occur, including when the abuser is the primary account holder. We tentatively conclude that an abuser who is not the primary account holder must not be notified when the lines of a survivor and individuals in the care of the survivor are separated from a shared mobile service contract. At the same time, we believe it is likely the abuser must necessarily be notified, even if not the primary account holder, when the *abuser's* line is separated. We seek comment on our analysis here, and specifically on how we can best ensure that survivors are protected in instances when primary account holders and abusers whose lines are being separated must be informed about line separations. If a covered provider needs to notify a primary account holder or abuser whose lines will be separated, should we require them to set a uniform amount of time after receiving a line separation request in which they will provide the notice? Is it feasible to require covered providers to wait until they have approved and processed a line separation before informing primary account holders or abusers whose lines will be separated, or will covered providers need to communicate with them before that point to implement account changes? Will covered providers be able to process all necessary account and service plan changes as needed if we implement such delays? When necessary, how should primary account holders and abusers whose lines are separated be notified of any account and billing changes? Additionally, should we prescribe any particular content of these notifications? Is there any language or terms providers should avoid using when notifying primary account holders and abusers whose lines are separated?

63. *Informing Survivors When Primary Account Holders and Abusers Will Receive Notification of Separations.* We propose to codify the Safe Connections Act's requirement that covered providers inform survivors who separate a line from a shared mobile contract but are not the primary account holder of the date on which the covered provider intends to give any formal notification to the primary account holder, and also tentatively conclude that covered providers inform survivors when the covered provider will inform the abuser of a line separation involving the abuser's line. We seek comment on when covered providers must inform the survivor of the date the covered provider will notify the primary account holder and abuser (when the abuser's line is being separated). How soon before the primary account holder and abuser receive notification must the survivor be informed? Is there any language or terms providers should avoid using when notifying survivors?

5. Prohibited Practices in Connection With Line Separation Requests

64. Except as specifically provided, the Safe Connections Act prohibits covered providers from making line separations contingent on: (1) payment of a fee, penalty, or other charge; (2) maintaining contractual or billing responsibility of a separated line with the provider; (3) approval of separation by the primary account holder, if the primary account holder is not the survivor; (4) a prohibition or limitation, including payment of a fee, penalty, or other charge, on number portability, provided such portability is technically feasible, or a request to change phone numbers; (5) a prohibition or limitation on the separation of lines as a result of arrears accrued by the account; (6) an increase in the rate charged for the mobile service plan of the primary account holder with respect to service on any remaining line or lines; or (7) any other requirement or limitation not specifically permitted by the Safe Connections Act. We propose to codify these prohibitions and limitations in our rules, and seek comment on our proposal, as well as implementation of these prohibitions, as described below.

65. *Fees, Penalties, and Other Charges.* We believe that the Safe Connections Act's prohibition on making line separations contingent on payment of a fee, penalty, or other charge is unambiguous. We also believe this clause would prohibit covered providers from enforcing any contractual early termination fees that may be triggered by a line separation request, if the line separation request was made pursuant to section 345, regardless of whether a survivor continues to receive service from the provider as part of a new arrangement upon a line separation or completely ceases to receive service from the provider. We seek comment on our proposed interpretation and any burdens it may impose on covered providers.

66. *Number Portability.* We believe that the Safe Connections Act effectively prohibits covered providers from conditioning a line separation on the customer maintaining service with the provider, provided that such portability is technically feasible, and that this prohibition applies to any lines that remain on the original account and any lines that are separated. We propose to interpret this provision to mean that both the party that will remain associated with the existing account and the party that will be associated with the separated lines must be permitted to port their numbers at the time of the line separation or after, without fees or penalties, provided such portability is technically feasible. We seek comment on this view. Below, we discuss further the contours of technical feasibility of number porting within the confines of the Safe Connections Act.

67. *Changing Phone Numbers.* We seek comment on how best to interpret the Safe Connections Act's provision that prevents a covered provider from prohibiting or limiting a survivor's ability to request a phone number change as part of a line separation request. We note that as a general matter, survivors who are willing to change their phone numbers can start a new account and obtain a new number without having to go through the line separation process. Under what circumstances might a survivor want to both secure a line separation and change phone numbers, and are there any particular implications of those circumstances that we should address?

For example, a survivor who is the primary account owner requesting separation of an abuser's line from the account might want to keep the account to maintain any promotional deals, complete device pay-off, or avoid early termination fees, but change a telephone number for safety reasons. We believe that this provision of the Safe Connections Act would bar covered providers from prohibiting such telephone number change requests or attaching a fee or penalty for doing so. We seek comment on this analysis, and any other circumstances which we should address.

68. *Rate Increases.* The Safe Connections Act prohibits covered providers from making a line separation request contingent on an increase in the rate charged for the mobile service plan of the primary account holder with respect to service on any remaining lines, but also provides that the prohibitions should not be construed ''to require a covered provider to provide a rate plan for the primary account holder that is not otherwise commercially available.'' To reconcile these two provisions, we make several tentative conclusions and seek comment on them. First, we believe the provision prohibiting covered providers from making a line separation contingent on a rate increase means that a covered provider cannot deny a survivor's line separation request if the primary account holder for the remaining lines does not agree to a rate increase. Second, we believe that provision also means that a covered provider cannot force the remaining primary account holder to switch to a service plan that has a higher rate, although the person may elect to switch to a rate plan that has a higher or lower rate from among those that are commercially available. Third, because the Safe Connections Act does not require covered providers to offer rate plans that are not otherwise commercially available, we believe covered providers are not required to offer survivors or remaining parties a specialized rate plan that is not commercially available if the party does not choose to continue the existing rate plan. Are there other ways to reconcile and interpret these two provisions? We do not read the Safe Connections Act to restrict covered providers from offering alternative rate plans to the party who remains associated with the original account. Additionally, we seek comment on whether we should require covered providers to provide rate plan options during the line separation process to the customer who remains associated with the existing account.

69. *Contractual and Billing Responsibilities.* We seek comment on the Safe Connections Act's prohibition on making a line separation contingent on ''maintaining contractual or billing responsibility of a separated line with the [covered] provider.'' Specifically, we believe this prohibition means that the party with the separated line must have the option to select any commercially available prepaid or non-contractual service plans offered by the covered provider, whether that party is a survivor or abuser. Likewise, we believe this prohibition would also prohibit a covered provider from requiring a survivor who separates a line from maintaining the same contract, including any specified contract length or terms, as the account from which those lines were separated (*i.e.,* continuing a contract for the remainder of the time on the original account for the new account or requiring the survivor to maintain all previously-subscribed services (voice, text, data) under the new account). We also believe this provision can be interpreted as prohibiting covered providers from requiring that separated lines remain with that covered provider's service. This is consistent with our belief that the Safe Connections Act does not allow covered providers to charge early termination fees to survivors. We seek comment on these views.

70. *Other Prohibited Restrictions and Limitations.* Beyond the issues discussed above, do the prohibited restrictions and limitations in the Safe Connections Act contain any other ambiguities or raise other implications for covered providers that we should address? Additionally, although the Safe Connections Act includes a catch-all provision that prohibits covered providers from making line separations contingent on any other requirement or limitation not specifically permitted by the Safe Connections Act, we seek comment on whether we should specify any other requirements or limitations as prohibited in our rules. For example, should we specify that a covered provider must effectuate a SIM change sought in connection with a valid line separation request even if the primary account holder has activated account takeover protections for the account, such as a block on all SIM changes? Does the catch-all provision give sufficient direction to covered providers on what else is prohibited?

71. *Provider Terms and Conditions.* Given the general prohibition on restrictions and limitations for line separation requests, we seek comment on whether covered providers can require customers involved in line separations to comply with the general terms and conditions associated with using a covered provider's services, so long as those terms and conditions do not contain the enumerated prohibitions above and do not otherwise hinder a survivor from obtaining a line separation. If so, under what legal authority? Are there particular restrictions in existing terms and conditions that could be used to prevent line separations that we should explicitly prohibit in our rules? Are there other ways that providers can use their terms and conditions to hinder line separations? We note that this approach would permit covered providers to suspend or terminate the services on the existing and new accounts for violations of the provider's terms and conditions at any time after the line separation is completed.

72. *Credit Checks.* We also seek comment on whether the Safe Connections Act prohibits covered providers from making a line separation contingent on the results of a credit check or other proof of a party's ability to pay. We recognize that providers may currently require individuals to complete credit checks or demonstrate ability to pay to ensure that customers can meet their payment obligations for services and devices. However, we acknowledged in the *Notice of Inquiry* that some survivors may not be able to demonstrate their financial stability as a result of their abusive situation and therefore may be foreclosed from obtaining services—and the record supported this finding.

73. Although the designated program may allow some survivors experiencing financial hardship to obtain services without payment issues, we are concerned about situations where a survivor does not qualify for the designated program and also fails to meet the credit standards deemed acceptable by providers. To account for these circumstances, we tentatively conclude that we should specify in our rules that covered providers cannot make line separations contingent on the results of a credit check or other proof of a party's ability to pay. Consistent with the approach we took in the *ACP Order,* we would still permit covered providers to perform credit checks that are part of their routine sign-up process for all customers so long as they do not take the results of the credit check into account when determining whether they can effectuate a line separation. We also tentatively conclude that providers should be prohibited from relying on credit check results to determine the service plans from which a survivor is eligible to select and whether a survivor

can take on the financial responsibilities for devices associated with lines used by the survivor or individuals in the care of the survivor. We seek comment on these tentative conclusions. We also seek comment on whether covered providers can use credit check results to determine which devices may be offered to a survivor for new purchases. We note that if we allow covered providers to require parties to comply with standard terms and conditions for services and devices, they would be able to enforce suspensions, terminations, or other remedies against customers for violating provisions described in those terms in conditions, such as failure to meet payment obligations.

74. If commenters believe that we should instead specify that covered providers should be permitted to rely on credit checks or other proof of payment capabilities in any of the circumstances described above, we ask commenters to describe how the Safe Connections Act provides us with the legal authority to do so, given its prohibition on making line separations contingent on ''any other limitation or requirement listed under subsection (c)'' of the Safe Connections Act. Additionally, if the Safe Connections Act permits covered providers to make line separations contingent on the result of a credit check or other proof of payment capabilities, should we require them to inform customers who fail to meet the provider's standards of other options, such as assistance through the designated program (if available), prepaid plans the provider might offer, and the ability to switch to another provider that may be able to accommodate the survivor? Are these alternatives adequate to provide survivors with communications services they need?

6. Financial Responsibilities and Account Billing Following Line Separations

75. The Safe Connections Act sets out requirements for financial responsibilities and account billing following line separations. Specifically, unless otherwise ordered by a court, when a survivor separates lines from a shared mobile service contract, the survivor must assume any financial responsibilities, including monthly service costs, for the transferred numbers beginning on the date when the lines are transferred. Survivors are not obligated to assume financial responsibility for mobile devices associated with those separated lines, unless the survivor purchased the mobile devices, affirmatively elects to maintain possession of the mobile devices, or is otherwise ordered to by a court. When an abuser's line is separated from an existing account, the survivor has no further financial responsibilities for the services and mobile device associated with the telephone number of that separated line. The statute also gives the Commission authority to establish additional rules concerning financial responsibilities and account billing following line separations. We propose to codify the statutory requirements and seek comment on any administrative challenges or other issues regarding billing and financial responsibilities that may arise from line separations that we should address.

76. We are particularly interested in learning how providers handle account billing issues following line separations they may perform now and whether the line separation requirements in the Safe Connections Act present new administrative challenges. We note that the Safe Connections Act requires covered providers to effectuate a line separation no later than two business days after receiving the request, meaning that account changes may need to occur in the middle of a billing cycle. If the Safe Connections Act requirements are different from providers' existing practices, how difficult would it be for providers to change their practices to meet the requirements? Are there particular challenges for smaller providers or those providers that may not conduct their own billing?

77. We recognize that there may be unique challenges with reassigning or separating contracts for device purchases. We believe the Safe Connections Act makes clear that, as a general matter, the individuals who purchased a device will maintain payment obligations for that device following a line separation. As the Safe Connections Act specifies, however, the survivor will take on the payment obligations for any devices the survivor elects to keep following separation of the survivor's line and the lines of those in the care of the survivor. We also believe it is clear that when an abuser's line is separated, the survivor is no longer responsible for the payment obligation for the device associated with that line. We tentatively conclude that if the abuser's line is separated and the abuser was the purchaser of any devices associated with lines that will remain on the account, the survivor can elect to keep those devices and take on the payment obligations for them. We seek comment on these proposed interpretations and the administrative challenges of implementing them. Do providers have the ability to reassign device payment contracts from one customer to another? We know anecdotally that some providers offer multi-device payment contracts, and these contracts often involve device discounts or associated service plan discounts. Some of the above separation scenarios may require splitting the payment obligations for devices that are on the same contract. Do providers have the ability to do this, especially in cases where the plan is no longer commercially available? How would they make adjustments to device or service plan discounts? Aside from reassigning or splitting contracts, does the Safe Connections Act allow covered providers to require the parties who are financially responsible for devices following separations to pay the full remaining balance of any devices or sign up for a new device payment plan at the time of the separation, or must they allow those parties to complete existing payment plans? We are particularly interested if this is permitted under the Safe Connections Act when it is the survivor taking on the payment obligation. Additionally, how would providers manage device payments when a line separation occurs midway through a billing cycle? Does the Safe Connections Act require them to prorate the payments?

78. Finally, we seek comment on how covered providers can manage previously-accrued arrears on an account following a line separation. We tentatively conclude that the arrears should stay with the primary account holder. For example, if the abuser's line is separated and the abuser was the primary account holder, the arrears would be reassigned to the abuser's new account. Similarly, if the survivor was the primary account holder and separates the abuser's line, the arrears would stay with the survivor's account. Conversely, if the survivor's line is separated and the abuser was the primary account holder, the arrears would stay with the abuser's account. Is this tentative conclusion administrable by covered providers?

7. Provider Obligations Related to Processing Line Separation Requests

79. In this section we seek comment on several topics concerning covered providers' obligations related to processing line separation requests.

80. *Number Porting.* Because the Safe Connections Act preserves survivors' ability to port their numbers in connection with line separation requests, we seek comment on the technical feasibility of such number ports. Generally, number portability

allows consumers to keep their telephone numbers when they change carriers and remain in the same location. Under the Commission's current rules, wireless carriers must port numbers to other wireless carriers upon request without regard to proximity of the requesting carrier's switch to the porting-out carrier's switch, and must port numbers to wireline carriers within the number's originating rate center. We believe these same number porting obligations apply for lines that have been separated pursuant to section 345; we do not believe that there is anything unique about number ports associated with line separations that would make such ports more or less technically feasible than under other circumstances. Accordingly, we tentatively conclude that any ports that covered providers are currently required to, and technically capable of, completing would be technically feasible under the Safe Connections Act. We also tentatively conclude that should the requirements or capabilities for porting change in the future, any newly-feasible ports also will be considered technically feasible when sought in connection with a line separation. We seek comment on our analysis and tentative conclusions.

81. We separately seek comment on the operational feasibility of separating lines and porting numbers at the same time. Have providers developed procedures to handle this already? If not, how burdensome would it be to do so? Because customers typically initiate port requests through a new provider, would it be feasible for survivors to seek a line separation and number port at the same time? Currently, customers seeking to port a telephone number to a new wireless provider must provide the new provider with the telephone number, account number, ZIP code, and any passcode on the account. Many wireless providers also require customers to authenticate the port request through a port-out PIN. Is it feasible for a survivor to have this information to provide to a new carrier to request a port before a line separation request has been effectuated and a new account established for the survivor? If a survivor initiates a port request with a new provider, would that request remain pending and then be processed as soon as the line separation with the old provider is effectuated? Do we need to modify our number porting rules to permit these processes? For instance, because of the complexity of these port requests, would they fall outside the timelines for processing simple port requests established by the Commission and industry agreement? What additional administrative and survivor confidentiality challenges may arise for processing line separations and port requests if the survivor is also seeking to qualify for the designated program with the new provider?

82. We also seek comment on steps we can take to prevent port-out fraud. In the 2021 *SIM Swap and Port-Out Fraud NPRM,* we asked if we should require providers to authenticate customers through means other than the information used to validate simple port requests, such as through the use of a PIN established with their current provider, before effectuating a port-out request, and several commenters replied in the affirmative. Above, we ask if we should require covered providers to allow survivors to select whether they intend to port their numbers during the line separation process. If we do, should we also require covered providers to require survivors to establish a PIN or another authentication key used by the provider to process port-out requests if the survivor indicates the intent to port-out numbers?

83. *Compliance with CPNI Protections and Other Law Enforcement Requirements.* As discussed above, section 222 of the Communications Act obligates telecommunications carriers to protect the privacy and security of information about their customers to which they have access as a result of their unique position as network operators. Section 222(a) requires carriers to protect the confidentiality of proprietary information of and relating to their customers. Subject to certain exceptions, section 222(c)(1) provides that a carrier may use, disclose, or permit access to CPNI that it has received by virtue of its provision of a telecommunications service only: (1) as required by law; (2) with the customer's approval; or (3) in its provision of the telecommunications service from which such information is derived or its provision of services necessary to or used in the provision of such telecommunications service. The Commission's rules implementing section 222 are designed to ensure that telecommunications carriers establish effective safeguards to protect against unauthorized use or disclosure of CPNI. Among other things, the rules require carriers to appropriately authenticate customers seeking access to CPNI. Our CPNI rules define a ''customer'' as ''a person or entity to which the telecommunications carrier is currently providing service.'' Our rules also require carriers to take reasonable measures to both discover and protect against attempts to gain unauthorized access to CPNI and to notify customers immediately of certain account changes, including whenever a customer's password, response to a carrier-designed back-up means of authentication, online account, or address of record is created or changed.

84. In light of the protections afforded to CPNI by section 222 and our implementing rules, we seek comment on how we can design the line separation rules to preserve those protections. In particular, we seek to understand who is a ''customer'' under our rules with respect to plans with multiple lines or users and whether the answer to that question affects how CPNI on such accounts must be protected following a line separation. For instance, if the abuser is the primary account holder, and the abuser's line is separated from the existing account, should the covered provider prevent the new primary account holder from accessing any historical CPNI associated with the account? Should the primary account holder's historical CPNI move with the separated user to a new account? If a survivor who is not the primary account holder separates the survivor's line from a shared mobile service contract, should the historical CPNI from that line be moved over to the new account? Do covered providers have the technical capability to complete such moves? Are there other issues that may arise as a result of line separations concerning the protection of CPNI? For example, our rules require telecommunications carriers to notify customers ''immediately'' whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed. We tentatively conclude that this rule should not apply in cases where the changes are made as a result of a line separation request pursuant to section 345, as it would run counter to the intentions of the Safe Connections Act. We seek comment on our tentative conclusion.

85. Aside from CPNI, the Safe Connections Act requires us to consider the effect of line separations and any rules we adopt on any other legal or law enforcement requirements. We seek comment on what other legal or law enforcement requirements may by impacted by line separations or the rules and proposals we discuss in this *NPRM* and how we can ensure our rules align with those requirements.

86. *Other Issues Related to Processing Requests.* We seek comment on whether covered providers may face any other issues when processing line separation requests. For instance, would covered providers face administrative challenges

if multiple survivors on an account each seek line separations at the same time? Are there any changes to processes that providers have to make with respect to the North America Numbering Plan and Reassigned Numbers Databases to comply with the Safe Connections Act's requirements? Would there be any issues if survivors choose to cancel their requests or submitted multiple requests in the same year? To what extent are any issues raised unique to the Safe Connections Act's requirements?

87. *Provider Policies and Practices.* Given the importance of line separation to survivors seeking to distance themselves from their abusers, we seek comment on the extent to which we should require covered providers to establish policies and practices to ensure that they process line separation requests effectively. At a minimum, we tentatively conclude that all employees who may interact with a survivor regarding a line separation must be trained on how to assist them or on how to direct them to employees who have received such training. What would be the burden on covered providers, particularly small providers, for any potential requirements we may adopt?

88. We also seek comment on what measures covered providers can take to detect and prevent fraud and abuse. Are there any particular requirements we should establish in the rules we adopt? Should we establish rules requiring covered providers to investigate and remediate fraud and abuse in a timely manner? Should we require providers to investigate cases where the primary account holder asserts that a line separation was fraudulent? Should providers create a process for primary account holders to report allegedly fraudulent line separations, and what course of action should providers take in response? What evidence is sufficient to show that a line separation was fraudulent, given the risk that an abuser may attempt to reverse a legitimate line separation by claiming it was fraudulent? How difficult will it be for covered providers to reverse line separations they discover were fraudulent?

89. *Other Measures To Prevent Abusers from Controlling Survivors.* We are concerned that if a survivor's abuser becomes aware that the survivor is seeking a line separation, the abuser may seek to prevent the line separation or preemptively cancel the line of service. We seek comment on steps covered providers can take to hinder those efforts. For example, should we require covered providers to lock an account to prevent all SIM changes, number ports, and line cancelations as soon as possible and no more than 12 hours after receiving a line separation request from a survivor, to prevent the abuser or other users from removing the survivor's access to the line before the request is processed? We also seek comment on whether we should require covered providers to keep records of SIM changes, number ports, and line cancelations and reverse or remediate any of those that were processed shortly before receiving a valid line separation request for numbers in the request, because the SIM change, number port, or cancelation could have been an attempt by an abuser to prevent a line separation. Would these requirements be technically and administratively feasible? If so, how much time prior to the line separation request should a SIM change, number port, or line cancelation be considered improper and subject to this remediation? Additionally, we seek comment on how covered providers should handle situations where an abuser contacts the covered provider to attempt to stop or reverse a line separation, such as by claiming the request is fraudulent. We tentatively conclude that covered providers should complete or maintain line separations and make a record of the complaint in the existing and new account in the event further evidence shows that the request was in fact fraudulent. What would be the burden on covered providers, particularly small providers, for implementing any of these requirements? Finally, we seek comment on what steps covered providers can take, if any, to remove or assist survivors with removing any spyware that an abuser may have installed on devices of the survivor or individuals in the survivor's care.

8. Implementation

90. *Timeframe.* We seek comment on the appropriate implementation timeframe for the requirements we propose in this *NPRM* to implement the new section 345. How long will covered providers need to implement the necessary technical and programmatic changes to comply with the requirements under section 345 and our proposed rules? What existing processes do covered providers have in place that would enable efficient implementation of our proposed rules? Are there challenges unique to small covered providers that may require a longer implementation period than larger covered providers? If so, how should we define ''small'' covered provider for these purposes? What would be an appropriate timeframe for small covered providers, balancing the costs and burdens with implementing our proposed rules against the critical public safety interests at stake for survivors?

91. *Effective Date.* The Safe Connections Act states that the line separation requirements in the statute ''shall take effect 60 days after the date on which the Federal Communications Commission adopts the rules implementing'' those requirements, and we propose to make final rules effective in accordance with that timeline. We note, however, that some of the rules to be adopted pursuant to this *NPRM* may require review by the Office of Management and Budget (OMB) prior to becoming effective under the Paperwork Reduction Act (PRA). While we believe the PRA provisions for emergency processing may facilitate harmonization of these statutory requirements, we seek comment on the implications of the Safe Connections Act's effective date provision for PRA review. Are there any steps we should take to preemptively address potential inconsistencies between OMB approval of final rules and the statutory effective date set forth in the Safe Connections Act?

92. *Liability Protection.* Under the Safe Connections Act, covered providers and their officers, directors, employees, vendors and agents are exempt from liability ''for any claims deriving from an action taken or omission made with respect to compliance'' with the Safe Connections Act and ''the rules adopted to implement'' the Safe Connections Act. Congress made clear, however, that nothing in that provision ''shall limit the authority of the Commission to enforce [the Safe Connections Act] or any rules or regulations promulgated by the Commission pursuant to [the Safe Connections Act].'' We seek comment on how, if at all, our rules should account for these provisions.

93. *Enforcement.* We seek comment on issues related to enforcement of the rules contemplated in this *NPRM.* Should the Commission adopt rules governing the enforcement of the specific requirements, or should the Commission employ the general enforcement mechanisms to impose monetary penalties on noncompliant service providers set forth in section 503 of the Communications Act, as well as in the Lifeline and ACP rules? Is there alternative authority for enforcement, such as derived from the Safe Connections Act, that we should consider? Given the potentially serious safety issues that could result from a covered provider's noncompliance with rules implementing the line separation obligations, we seek comment on appropriate, specific penalties that

could be adopted to incentivize compliance with program requirements.

B. Ensuring the Privacy of Calls and Texts Messages to Domestic Abuse Hotlines

94. The Safe Connections Act directs us to consider whether and how to ''establish, and update on a monthly basis, a central database of covered hotlines to be used by a covered provider or a wireline provider of voice service'' and whether and how to ''require a covered provider or a wireline provider of voice service to omit from consumer-facing logs of calls or text messages any records of calls or text messages to covered hotlines in [such a] central database, while maintaining internal records of those calls and messages.'' Below, we propose to establish such a central database, but we begin our discussion of this provision of the statute by proposing to require covered providers to omit calls or text messages to the relevant hotlines and analyzing the scope of that obligation.

1. Creating an Obligation To Protect the Privacy of Calls and Text Messages to Hotlines

95. We propose to adopt a requirement that covered providers and wireline providers of voice service omit from consumer-facing logs of calls or text messages any records of calls or text messages to covered hotlines that appear in a central database, while maintaining internal records of those calls and text messages. Congress has found that ''perpetrators of [sexual] violence and abuse . . . increasingly use technological and communications tools to exercise control over, monitor, and abuse their victims'' and that ''[s]afeguards within communications services can serve a role in preventing abuse and narrowing the digital divide experienced by survivors of abuse.'' As discussed above, these findings are supported by, among other things, field work with domestic violence survivors demonstrating the risk of abusers' accessing domestic abuse survivors' digital footprint, particularly call logs. The NVRDC observed in response to our *Notice of Inquiry* how ''[c]all and text records to and from covered organizations would likely tip off an abuser who is closely monitoring all communications.'' We are concerned that survivors may be deterred by the threat of an abuser using access to call and text logs to determine whether the survivor is in the process of seeking help, seeking to report, or seeking to flee, particularly given the desire for survivors to maintain secrecy and privacy. We therefore tentatively conclude that protecting the privacy of calls and text messages to hotlines as described by the Safe Connections Act is in the public interest, and seek comment on this tentative conclusion.

96. The Safe Connections Act specifically requires the Commission to consider certain matters when determining whether to adopt a requirement for protecting the privacy of calls and text messages to hotlines. Specifically, section 5(b)(3)(B) of the Safe Connections Act requires us to consider the technical feasibility of such a requirement—that is, ''the ability of a covered provider or a wireline provider of voice service to . . . identify logs that are consumer-facing . . . and . . . omit certain consumer-facing logs, while maintaining internal records of such calls and text messages,'' as well as ''any other factors associated with the implementation of [such requirements], including factors that may impact smaller providers.'' Section 5(b)(3)(B) also requires us to consider ''the ability of law enforcement agencies or survivors to access a log of calls or text messages in a criminal investigation or civil proceeding.''

97. Covered providers and wireline providers of voice service have the ability to identify consumer-facing call and text logs. In fact, many service providers openly promote the ability of consumers to access such logs, and we believe these providers should be able to identify, and withhold as necessary, the call and text log information. We seek comment on this belief and whether there are any operational or technical impediments to any covered providers or wireline providers of voice service selectively omitting calls and text messages from certain telephone numbers from call and text logs. We note that there is no discussion of such concerns in the record in response to the *Notice of Inquiry* and it would seem that whatever processes translate internal service provider data (such as call records) to the web page or billing output that consumers see can be programmed to also filter out certain records. Indeed, neither of the two trade associations representing substantially different segments of what would be covered providers and/or providers of wireline voice service raise insurmountable issues relating to selectively omitting calls and text messages from call and text logs.

98. Further, records of calls and text messages do not appear to exist solely in the form of call logs, but, rather, independent records—that is, some processing must be applied to the records to create call logs. As a result, we expect service providers should be able to maintain log records of calls and text messages that they omit from consumer-facing logs when such records are required for any criminal or civil enforcement proceeding—or for any other reason. As a safeguard, we propose to explicitly require service providers to maintain the internal records of calls and text messages omitted from consumer-facing logs. We seek comment on this approach.

99. We seek comment on our proposal and our consideration of the matters described in section 5(b)(3)(B) of the Safe Connections Act. Does the appearance of calls and text messages to hotlines in call and text logs indeed pose a risk to survivors and also sometimes deter use of hotlines? Is our tentative conclusion that it is possible for covered providers and wireline providers of voice service to omit certain call and text message records from consumer-facing logs while maintaining such call and text message records for other purposes, such as when a survivor or law enforcement needs access to them, correct? How expensive would establishing and maintaining such a system be? What level of effort would be required?

100. Do service providers using certain transmission technologies (wireless versus wireline, time division multiplexing versus Voice over internet Protocol, etc.) or of a certain size (such as smaller service providers) face unique challenges that we should consider? Are these concerns great enough to exempt certain service providers? We are concerned that creating a patchwork of service providers subject to requirements to protect the privacy of calls and text messages to hotlines may create confusion for survivors, who may not know if they can rely on the privacy of their calls and text messages to hotlines. Do commenters agree? If exemptions or extensions are necessary for some providers, how can we mitigate these concerns? If commenters believe that this can be done through service provider communications, we request that such commenters propose how such communications could be conducted in instances in which the survivor is not the primary account holder.

101. Are there any matters and considerations unique to protecting the privacy of text messages sent to hotlines? Due to the popularity of text messaging, we believe it reasonable to assume that some survivors seek to communicate with hotlines through such means, and we also believe that any requirements should apply equally

to call and text logs. Several states, localities, and non-profits have created text messaging hotlines that allow survivors to more discreetly seek help in the event that making a phone call might jeopardize their safety. While not all covered hotlines will provide text messaging options for survivors of domestic violence, we believe that requiring service providers to omit text messages to hotlines from text logs will help protect and save survivors. We seek comment on our proposed analysis.

102. We also seek comment on whether we should establish exceptions pertaining to particular calls or text messages. If we were to create exceptions, how should survivors who may otherwise rely on the privacy of *all* calls and text messages to hotlines be made aware that certain calls and text messages may be disclosed in logs due to exceptions? How often are toll calls or usage-fee-inducing mobile calls and text messages made to hotlines? Are there any other potentially valid bases for exceptions based on particular calls and text messages and, if so, how should such exceptions be implemented?

2. Defining the Scope of the Obligation

103. How we define certain critical terms significantly affects which service providers are subject to any obligation to protect the privacy of calls and text messages to hotlines, the extent of such obligations, and to which hotlines the obligations apply. In addition to seeking comment on defining the following terms, are there any other terms that commenters believe we should define and, if so, how should we define them?

104. *Covered Provider.* We propose to apply the obligation to protect the privacy of calls and text messages to hotlines to all ''covered provider(s),'' as defined in the Safe Connections Act. Therefore, we propose to use the same definition of covered provider used for the purpose of applying line separation obligations under section 345 of the Communications Act, as added by the Safe Connections Act. Do commenters agree that this is the appropriate definition? If not, we invite commenters to suggest alternative definitions. If we create exceptions or delayed implementation for smaller covered providers, should this be reflected in our rules as an exception to the definition of covered provider or in another manner?

105. *Voice Service.* In addition to covered providers, we propose to apply the obligation to protect the privacy of calls and text messages to hotlines to all ''wireline providers of voice service,'' as suggested by the Safe Connections Act. We propose to base our definition of ''voice service'' on the definition in section 5 of the Safe Connections Act. That provision references section 4(a) of the TRACED Act, which defines ''voice service'' as ''any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end user using resources from the North American Numbering Plan,'' including transmissions from facsimile machines and computers and ''any service that requires internet protocol-compatible customer premises equipment . . . and permits out-bound calling, whether or not the service is one-way or two-way voice over internet protocol.'' We note that the Commission has previously interpreted that provision of the TRACED Act when implementing that legislation's requirements and mirrored the definition established in the legislation in the Commission's rules. We seek comment on this proposal.

106. We tentatively conclude that we need not define the term ''wireline provider'' given what we consider to be its plain meaning when used in conjunction with ''of voice service,'' as we propose to define the latter term. Do commenters agree that the words ''wireline provider'' are sufficiently unambiguous to not require definition? If not, we request that such commenters suggest an appropriate definition. If we create exceptions or delayed implementation for smaller wireline providers of voice service, should this be reflected in our rules as an exception to the definition of ''wireline provider of voice service,'' or in another manner?

107. *Other Potential Service Providers to Include.* We seek comment on whether the public interest would be served by including providers of voice service that offer service using fixed wireless and fixed satellite service so that survivors have no doubt that when they call or text covered hotlines, their calls will not appear in call or text logs. Neither fixed wireless nor fixed satellite providers of voice service appear to be ''covered providers'' or ''wireline providers of voice service.'' The services that they provide are not Commercial Mobile Radio Service or Private Mobile Radio Service because they do not meet the definitions in the Communications Act, and, therefore, providers of such services are not ''covered providers.'' Further, neither of these services is a ''wireline'' service. Do commenters agree that neither fixed wireless nor fixed satellite providers are covered by the terms ''covered provider'' or ''wireline provider of voice service'' in the Safe Connections Act? Do commenters support including those types of providers in the obligation to protect the privacy of calls and text messages to hotlines? If so, under what authority might the Commission impose such an obligation? Are there unique burdens that imposing an obligation to protect the privacy of calls and text messages to hotlines would impose on fixed wireless and fixed satellite providers of voice service? If commenters support including these types of providers, we request suggestions for how to implement this broadened scope in our proposed rules. In addition, we tentatively conclude that intermediate providers would not be considered covered providers, consistent with the TRACED Act's definition of ''voice service'' and seek comment on this tentative conclusion. Do commenters believe there are additional types of providers that we should include?

108. *Call.* The Safe Connections Act does not define the term ''call,'' nor is it defined in the Communications Act. We propose to define a ''call'' as a voice service transmission, regardless of whether such transmission is completed. We believe that given the expansive definition of ''voice service,'' which we propose to define without regard to whether it be wireline or wireless, such term sufficiently captures the means by which survivors would use the public switched telephone network to reach covered hotlines. Although we suspect that only completed transmissions would appear on call logs, out of an abundance of caution, we propose to include completed and uncompleted transmissions in the definition of ''call.'' Do commenters agree with our proposed definition? Are there any transmissions handled by covered providers and providers of wireline voice service that we should consider to be ''calls'' that would be excluded from this definition?

109. *Text Message.* We propose to adopt the same definition of ''text message'' as given in the Safe Connections Act. Such term is defined in the legislation as having the same meaning as in section 227(e)(8) of the Communications Act, which is ''a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number'' and includes short message service (SMS) and multimedia message service (MMS) messages. The definition explicitly excludes ''message[s] sent over an IP-enabled messaging service to another user of the same messaging service'' that do not otherwise meet the general

definition, as well as ''real-time, two-way voice or video communication.'' When the Commission interpreted section 227(e)(8) for purposes of implementation, it adopted a rule that mirrors the statutory text. We believe that language is also appropriate for purposes of Safe Connections Act implementation and propose to adopt it. We seek comment on this proposal.

110. *Covered Hotline.* The Safe Connections Act defines the term ''covered hotline'' to mean ''a hotline related to domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, or any other similar act.'' We propose to adopt this definition in our rules, but believe that we should further clarify what constitutes a ''hotline'' and how much of the counseling services and information provided on the ''hotline'' must relate to ''domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, or any other similar act[s]'' for the ''hotline'' to be a ''covered hotline.''

111. As an initial matter, we tentatively conclude that in providing these clarifications, we should strive to meet the broadest reasonable expectations of a survivor seeking to place calls and send text messages without fear that they will appear in logs. Do commenters agree with this general approach to the definition of ''covered hotline''? Are there any disadvantages to being more rather than less inclusive in determining what is a ''covered hotline''? Are there any entities that we should specifically exclude from our definition of ''covered hotlines''? Are there any factors we need to consider that could lead us to conclude that the scope of ''covered hotlines'' should be less exhaustive?

112. Turning to the specific definition, to be a ''covered hotline,'' the service associated with the pertinent telephone number must be a ''hotline,'' a term not defined in the Safe Connections Act. Given the Safe Connections Act's definition of ''covered hotline,'' as well as the potential use of a central database of ''covered hotlines'' (calls and text messages to which would be omitted from logs of calls and texts), we believe it reasonable to interpret the term ''hotline'' generally to mean a telephone number on which counseling and information pertaining to a particular topic or topics is provided. We suspect, however, that certain telephone numbers may serve as ''hotlines'' and also be used for other purposes, such as the main telephone number for the organization providing the counseling and/or information service. Further, we tentatively conclude that telephone numbers should not be excluded from being ''covered hotlines'' because they do not serve exclusively as ''hotlines.'' Indeed, we believe that we can best achieve the goal of minimizing hotline hesitancy by interpreting ''hotline'' as broadly as possible, including telephone numbers on which an organization provides anything more than a de minimis amount of information and counseling and propose to use this standard as a component in our definition of ''covered hotline.'' Do commenters agree with this approach that we should not require that a telephone number serve exclusively as a ''hotline''? Are there any other considerations associated with an expansive definition of ''hotline'' that we should consider?

113. We tentatively conclude that a ''covered hotline'' need not exclusively provide counseling and information to service domestic violence survivors because such a requirement would be overly restrictive and potentially exclude some hotlines that are providing essential services to domestic violence survivors. Thus, at least initially, we believe it is best to be as inclusive as possible and define as a ''covered hotline'' any hotline that provides counseling and information on topics described in the Safe Connections Act's definition of ''covered hotline'' as more than a *de minimis* portion of the hotlines' operations. Do commenters agree? Should we instead establish a percentage of the organization's services that need to be related to covered counseling for the hotline to be a covered hotline? If so, what percentage?

114. Given the novelty of overseeing a central database of covered hotlines, and to maximize the efficiency in resolving future matters of interpretation under these provisions of the Safe Connections Act, we also propose delegating to the Wireline Competition Bureau the task of providing further clarification, as necessary, of the scope and definition of ''covered hotline.'' We invite comment on this proposal.

115. *Consumer-Facing Logs of Calls and Text Messages.* The Safe Connections Act does not define the term ''consumer-facing logs of calls or text messages.'' In light of our goal of minimizing hotline hesitancy by preventing abusers from being made aware of survivors' calls and text messages to hotlines, we believe that we should define the term as broadly as possible. We propose to define such logs as any means by which a service provider presents to a consumer a listing of telephone numbers to which calls or text messages were directed, regardless of, for example, the medium used (such as by paper, online listing, or electronic file), whether the calls were completed or the text messages were successfully delivered, whether part of a bill or otherwise, and whether requested by the consumer or otherwise provided. In addition, our proposed definition includes oral disclosures (likely through customer service representatives) and written disclosures by service providers of individual call or text message records. For avoidance of doubt, we propose to exclude from this definition any logs of calls or text messages stored on consumers' wireless devices or wireline telephones, such as recent calls stored in the mobile device's phone app or lists of recently dialed numbers on cordless wireline handsets. We seek comment on our proposed definition. Does it provide sufficient specificity for service providers to implement our proposed rules?

3. Creating and Maintaining the Central Database of Hotlines

116. The Safe Connections Act directs the Commission to begin a rulemaking no later than 180 days after its enactment to consider whether and how to establish a central database of hotlines related to domestic violence, dating violence, stalking, sexual assault, human trafficking, and other related crimes that could be updated monthly and used by a mobile service provider or a wireline provider of voice service to omit the records of calls or text messages to such hotlines from consumer-facing logs of calls or text messages. We satisfy this obligation by seeking comment here on whether and how to establish such a central database of covered hotlines. We propose to establish a central database of covered hotlines that would be updated monthly. We believe that a central database would provide certainty as to which records are to be suppressed, thus fulfilling the Safe Connections Act's objective to protect survivors while making clear service providers' compliance obligations. We seek comment on this proposal and ask, as a general matter, whether commenters agree that we should establish a central database as part of our efforts to protect the privacy of calls and text messages to covered hotlines. Are there any reasons not to create a central database of covered hotlines? Are there any current lists or existing repositories of hotlines maintained by national organizations seeking to end domestic violence that

could provide the foundation for such a database?

117. We next explore the issue of who should administer this database. Should the Commission? Alternatively, should a third party serve as the central database administrator (in which case all policy decisions would continue to be made by the Commission)? What are the advantages and disadvantages of each option? If we were to use a third party as the database administrator, how should it be selected? Are there any special requirements that the Commission should seek in a database administrator? What entities have the expertise needed to be the administrator of such a database? Do commenters have any suggestions for the particular manner in which the Commission would oversee the administrator of the database?

118. We also seek comment on the scope of the database administrator's role and responsibilities. Should the database administrator be responsible not only for operating the central database, but also for initially populating the central database? We expect it would be more efficient to have a single entity populate the database initially and also take responsibility for updating the entries in the database periodically. If the database administrator will not be responsible for initially populating the database, how should the Commission establish and populate the system? How should the initial set of covered hotlines be identified and information about them collected for the central database? Would it be necessary to create an entirely new database or would it be possible to expand or modify an existing database? What role should operators of covered hotlines play in ensuring their inclusion in the central database, as well as the accuracy of their information? Should individual hotline operators be permitted to list multiple numbers in the central database? How should the Commission and the database administrator work with hotline operators? Should the database administrator accept submissions of hotlines from third parties, presumably followed by verification with the hotline operator?

119. What steps should the Commission and database administrator take to maximize the comprehensiveness and accuracy of the central database both initially and after it is established? We believe one significant step would be making certain fields of the central database public. At present, we expect the central database to include the name of the hotline, its telephone number, a contact name (and telephone number), and an address. We propose to make publicly available the names of the covered hotlines and their telephone numbers, as well as any location information that a covered hotline may elect to make available, such as any geographic area in which they concentrate their efforts, but we invite commenters to address whether there are other permissible disclosures of contact information under the Privacy Act System of Record Notice (SORN) governing our use and disclosure of contact information that should be restricted given the unique equities here, to preserve that information as confidential. We believe that it will substantially improve the accuracy of the list because the public, including interested support organizations, will be able to inspect it and report any invalid numbers and/or information listed. This will have the additional benefit of allowing for a means by which a survivor who is hesitant about calling a covered hotline can check the list to determine whether the number they plan to call or text message will indeed be omitted. Because a hotline needs its telephone number to be public for the hotline to be effective, we envision few potential disadvantages of making the central database of covered hotlines public. Do commenters agree that we should make the central database public in the manner discussed above? Are there further advantages? Are there any significant disadvantages? If we do make the central database of covered hotlines public, should we permit operators of hotlines to include location information other than street address, such as city, part of a state, state, etc., if they wish to do so? Are there any other steps that can be taken to maximize the comprehensiveness and accuracy of the central database both initially and after it is established?

120. Once a potential covered hotline has been identified, what process should be used for determining whether a hotline is a covered hotline? Should we require a self-certification by the operator of the hotline? Should the database administrator conduct additional research? Should we require operators of hotlines to demonstrate or at least certify that they meet the definition of a covered hotline? We invite commenters to identify such considerations and also propose solutions.

121. *Central Database Updates.* The Safe Connections Act directs the Commission to consider whether and how to ''. . . update on a monthly basis, [the] central database of covered hotlines to be used by a covered provider or a wireline provider of voice service.'' We propose for the central database to be updated monthly to keep up with the dynamic nature of support networks for survivors. Do commenters agree?

122. With regard to hotlines already in the central database, we propose that it be the responsibility of the hotline operators to notify the database administrator of any changes to their information, including the telephone number for the hotline. Under our proposal, the database administrator would also take update submissions from third parties, subject to verification with the hotline operator. We further propose that the database administrator should conduct an annual outreach campaign to hotline operators requesting that they confirm the accuracy of their current information. Should part of the updating process include routine certifications and, if so, how frequently? Over time, should organizations be automatically removed from the central database if they do not recertify their applications? Do commenters agree with these proposals regarding updating information already contained in the central database?

123. We expect the process of adding additional hotlines to the central database to be different from initially creating the database because, for example, it may not be practical for the Commission to issue a formal call for submissions to the database on a monthly basis. How should new candidates for inclusion in the central database be identified? Should the database administrator be tasked with performing routine checks for new hotlines? Are there feasible means of doing so? How often should this be done? We propose that the database administrator routinely accept submissions of covered hotline information both from their operators and third parties, the latter subject to whatever verification process we may establish for the initial creation of the central database. Do commenters agree with these proposals? What other steps could the Commission and the database administrator take to continue to monitor for potential additions to the central database of covered hotlines?

124. *Funding of the Central Database.* Section 5(b)(3) of the Safe Connections Act does not identify an appropriation to fund the maintenance and operation of the central database. In light of this, how should this central database be funded? Is there a legal basis to use cost recovery from all telecommunications and interconnected VoIP service providers using revenue or some other indicia, similar to the Universal Service Fund and funding for the North

American Numbering Plan? What authority would the Commission rely upon to use a cost recovery support mechanism for the central database? If a cost recovery scheme based on revenue is considered, what revenue base should be used? How often should assessments be made? Who should bill and collect for such assessments and what process should we use to select this entity? If the central database's creation and operations are not funded through an assessment based on service provider revenue, what alternative do commenters recommend? Commenters should address whether any proposed funding scheme presents Miscellaneous Receipts Act or Anti-Deficiency Act concerns? Does the Safe Connections Act contemplate (and permit) the Commission to establish rules pertaining to use of the database, but defer actual creation of the database until we can request and receive specific funding? If so, should we, in fact, defer actual creation of the database in such a manner? We seek comment on how the database should be funded at initial implementation and on an ongoing basis given the Safe Connections Act's requirement that this database be updated monthly.

4. Using the Central Database of Hotlines

125. Under our proposal and consistent with the Safe Connections Act, the central database of covered hotlines will serve as the source of covered hotlines to which calls and text messages must be omitted from consumer-facing logs. We seek comment on how the required use of the central database should be operationalized in our rules.

126. As an initial matter, we propose that service providers be responsible for downloading the central database themselves in light of our proposal to make it public on a website to be maintained by the database administrator. This version of the central database would include only the organization name and telephone number(s) (omitting addresses and contact information) and would be available in an easily downloadable and widely used format, such as a delimited text file. We tentatively conclude that the administrative burdens on service providers under such a system would be minimal. We seek comment on this proposal. If commenters disagree with our proposal to make the central database publicly available, and, thus, downloadable by service providers from a public website, we request proposals for how we should control access to the central database.

127. We seek comment on an appropriate amount of time following adoption of rules by which service providers should be required to comply with the obligation to protect the privacy of calls and text messages to hotlines. Should we factor in potential unique challenges that certain providers (such as those using certain technologies or those of a certain size) may face when establishing a compliance date? Should the compliance deadline vary by the type of service provider, such as by allowing smaller providers more time to comply? If so, how should we determine the service providers that should be given more time and how much more time should be provided? Are there any disadvantages to providing certain service providers a later compliance deadline, such as potentially creating confusion for survivors in not knowing when their particular service provider will begin complying? Are there ways to mitigate these concerns?

128. Should we establish a minimum frequency for service providers to download updates to the central database? Section 5(b)(3)(D) of the Safe Connections Act, which provides a safe harbor defense in court actions if ''a covered provider updates its own databases to match the central database not less frequently than once every 30 days,'' affect our requirements in this regard? Should we establish 30 days as the minimum frequency at which service providers must download updates? Would downloaded central database updates be immediately implemented in service provider systems? For example, do service providers expect to need to test updates? If so, how should our rules account for this, considering that survivors may expect updates to be implemented relatively quickly? Should we establish a maximum period of time between when the administrator makes an update available and when such an update is implemented in service providers' systems?

129. What measures should we take to ensure and determine compliance by service providers with any rules that we might adopt for protecting the privacy of calls and text messages to hotlines? Should we require regular certifications and, if so, how frequently? Should we establish specific penalties for failure by service providers to comply with any rules protecting the privacy of calls and text messages to hotlines? If so, what should they be? Are there any other aspects of a compliance framework that we should establish?

130. Are there any potential inconsistencies between the rules that we might adopt to ensure the privacy of calls and text messages to hotlines and other Commission rules or state regulations? For example, would omitting toll calls that incur separate charges from consumers' bills conflict with our truth-in-billing rules? Are there any other potential inconsistencies? Should we explicitly resolve them and, if so, how? What role might disclaimers issued by service providers play?

131. We seek comment on the Commission's legal authority to adopt rules to establish, and update on a monthly basis, a central database of covered hotlines and to require covered providers and wireline providers of voice service to omit from consumer-facing logs of calls or text messages any records of calls or text messages to covered hotlines that appear in such central database, while maintaining internal records of those calls and messages. We tentatively conclude that Congress directing the Commission to consider how to adopt rules for these purposes inherently grants the Commission the legal authority to adopt such rules. We seek comment on this tentative conclusion. Further, we seek comment on other potential sources of legal authority for the adoption of such rules, such as Title I (via ancillary authority) and section 201(b) of the Communications Act, perhaps in conjunction with the Commission's purpose under section 1 of the Communications Act to promote ''safety of life'' and Title III (sections 301, 303, 307, 309, or 316).

132. Are there any other issues that commenters believe we should consider with regard to section 5(b)(3) of the Safe Connections Act? We invite commenters to identify and comment on any other issues relating to a service provider's ability and obligation to protect the privacy of calls and text messages to hotlines, the scope of such obligations, creating and maintaining the central database of hotlines, and how service providers should be obligated to use such central database.

C. Emergency Communications Support for Survivors

1. The Designated Program for Emergency Communications Support

133. The Safe Connections Act requires the Commission to designate either the Lifeline program or the Affordable Connectivity Program (ACP) to provide emergency communications support to qualifying survivors suffering from financial hardship, regardless of whether the survivor might otherwise meet the designated program's eligibility requirements. While

''emergency communications support'' is not defined by the Safe Connections Act, we construe the Act's references to emergency communications support to be the time-limited support offered to survivors suffering financial hardship through the designated program. The ACP provides funds for an affordable connectivity benefit consisting of up to a $30 per month standard discount on the price of broadband internet access services that participating providers supply to eligible households and an enhanced discount of up to $75 for ACP households residing on qualifying Tribal lands. The ACP benefit can be applied to any internet service offering of a participating provider, including bundles containing mobile voice, SMS, and broadband. The Lifeline program is one of the Commission's long-standing Universal Service Fund programs, providing a benefit of up to a base $9.25 per month for a discount on the price of voice and broadband service provided by eligible telecommunications carriers (ETCs). Households participating in Lifeline that reside on qualifying Tribal lands are also eligible to receive an additional discount of up to $25.

134. We seek comment on which program, Lifeline or ACP, to designate to provide emergency communications support to survivors in accordance with the Safe Connections Act. The Lifeline program allows participants to receive support for broadband service, bundled service, or voice-only service. As with Lifeline, ACP offers support for broadband and broadband service bundled with voice and/or text messaging, but it does not offer the flexibility to apply the benefit to voice-only service. While the ACP offers a greater reimbursement amount for program participants receiving broadband or bundled service we understand that offering support for a voice option is critical for survivors, and the Safe Connections Act is particularly focused on the ability of survivors to establish voice connections independent from their abusers. Additionally, the ACP relies on an appropriated fund in a definite amount, whereas the Lifeline program is funded by the Universal Service Fund, which is a permanent indefinite appropriation. What are the benefits and limitations of choosing Lifeline as the designated program? What are the benefits and limitations of choosing the ACP as the designated program? If we decide to designate the ACP to provide emergency communications support, how should we handle the potential wind-down of the program?

135. If the Commission selects Lifeline as the designated program, to ensure the maximum financial assistance available to survivors, we seek comment on whether we have authority under the Safe Connections Act to allow qualifying survivors enrolled in Lifeline through this pathway provided by the Safe Connections Act to use that enrollment in Lifeline to also enroll in ACP. Just as with the Consolidated Appropriations Act that established the Emergency Broadband Benefit Program, the Infrastructure Act directs that a household qualifies for ACP if it meets the qualification for participation in Lifeline. Under the Commission's rules, households that are enrolled in Lifeline can enroll in ACP without needing to complete an ACP application. However, the ACP's statute ties qualification for the program to the specific eligibility criteria of the Lifeline program. If Lifeline is the designated program for survivors, should survivors who only have access to the Lifeline program through their status under the Safe Connections Act be permitted to use their Lifeline participation to also enroll in the ACP? If we were to modify the eligibility requirements of the Lifeline program to allow survivors to enter the program with a more expansive set of criteria, would that address any concerns with the ACP statute's requirements and allow survivors to participate in both programs? If such survivors were permitted to participate in the ACP, should their ACP participation also be limited to the six months contemplated by the Safe Connections Act? What modifications to current ACP enrollment processes for current Lifeline subscribers should we consider if we implement this ACP enrollment pathway?

136. Additionally, we seek comment on ways that we might be able to enhance the designated program to best serve survivors enrolling pursuant to the Safe Connections Act. For instance, the Lifeline program currently allows for base reimbursement of qualifying voice-only plans up to $5.25 and qualifying broadband or bundled plans are eligible to receive up to $9.25 in Lifeline support. Recognizing the critical role that voice service plays in the lives of survivors, would it be appropriate to allow providers serving qualifying survivors to provide discounts of, and claim reimbursement for, up to $9.25, the full Lifeline reimbursement, even for voice-only service plans? We note that section 5(b)(2)(A)(ii)(II) of the Safe Connections Act directs the Commission to adopt rules that allow a survivor who is suffering from financial hardship and meets the requirements of section 345(c)(1) to enroll in the designated program as quickly as feasible and to ''participate in the designated program based on such qualifications for not more than 6 months.'' We construe the directive to allow relevant survivors to ''participate'' in the designated program to mean, among other things, that those survivors can receive the full subsidy currently available under the designated program for up to six months. We seek comment on this view. If this were permitted, how should USAC allow service providers to make such claims while ensuring survivors' privacy? If we select Lifeline as the designated program, how might the contribution factor be impacted by an increase in support for voice-only service, even for a limited population, to ensure sufficient support benefits for survivors through the Universal Service Fund? We also note that the Safe Connections Act does not explicitly discuss survivors' access to the designated program's enhanced benefit for residents of Tribal lands. However, the enhanced benefit for Tribal lands is an established component of the ''federal Lifeline support amount'' and ''affordable connectivity benefit support amount'' as established by the Commission's rules. Therefore, we tentatively conclude that survivors who would otherwise be eligible for emergency communications support under the Safe Connections Act and reside on qualifying Tribal lands will also be able to receive the designated program's enhanced Tribal benefit. What are the benefits or drawbacks associated with allowing survivors to qualify for the Tribal enhanced benefit?

137. Providers in the Lifeline program must be designated ETCs by state regulatory agencies or, where a state declines this responsibility, by the Commission. For the ACP, participating providers are limited to providers of ''broadband internet access service''. These requirements are more limiting than the broader definition of ''covered providers'' contemplated by the Safe Connections Act. While Congress clearly instructed the Commission to designate either the Lifeline program or ACP as the designated program, we seek comment on the interplay between the limiting nature of the Lifeline program's ETC requirement and the broader understanding of ''covered providers.'' We also seek comment on the interplay between the Safe Connections Act's definition of ''covered providers'' and

the definition of ''provider'' used in the ACP.

138. We seek comment on the impact of the designated program's benefit as it pertains to survivors' access to devices following completion of a line separation request. The Lifeline program does not offer any reimbursement for devices, unlike the ACP, which offers reimbursement for qualifying devices, but such devices are limited to internet-connected laptops, desktops, and tablets. Does this significantly impact the Lifeline program's or ACP's effectiveness for survivors? We seek comment on the impact the one-time ACP connected device discount may have for survivors, and in particular, those who qualify to enroll in the designated program under the Safe Connections Act. While the Commission has not adopted rules that offer device reimbursement in the Lifeline program, we seek comment on the ways in which devices are made available to enrolling Lifeline subscribers in the marketplace. Aside from providers, is there a role for organizations that work with survivors suffering financial hardship to help distribute connected devices and mobile phones to those enrolling in Lifeline as the designated program through the Safe Connections Act?

139. We also propose rules the Commission could adopt to implement the emergency communications support provisions of the Safe Connections Act without prejudice as to whether to designate either the Lifeline program or ACP as the program to provide such support. In this regard, we seek comment on both the amendments to Part 54 as they appear at the end of this document (using the Lifeline program as an example), as well as how such amendments could be adapted to the Commission's existing ACP rules.

2. Defining Financial Hardship

140. The Safe Connections Act directs the Commission to allow survivors suffering from financial hardship to enroll in the designated program ''*without regard* to whether the survivor meets the otherwise applicable eligibility requirements.'' We seek comment on how to interpret this provision of the Safe Connections Act. We propose to interpret this provision to mean that, if a person meets the criteria of ''suffering from financial hardship'' and meets the requirements of section 345(c)(1), then the person may enroll in the designated program even if they do not meet the qualification requirements for the designated program, whether Lifeline or the ACP. While the eligibility requirements of Lifeline are established in the Commission's rules, the eligibility criteria for the ACP are statutory. If we were to designate the ACP to provide survivors with emergency communications support, would we have to use the ACP's eligibility requirements in the definition of financial hardship, or did Congress intend that the survivor eligibility requirements in the Safe Connections Act supersede the ACP's statutory eligibility requirements if the ACP were the designated program? If Congress did not intend for the Commission to define financial hardship more expansively than the ACP's statutory eligibility requirements, then what meaning should the Commission attribute to section 5(b)(2)(A)(ii) of the Safe Connections Act?

141. We also seek comment on how we should interpret and incorporate section 345(c)(1) of the Communications Act for purposes of verifying eligibility for the designated program. The Safe Connections Act states that a survivor seeking to participate in the designated program must ''meet[ ] the requirements under'' the newly added ''section 345(c)(1),'' which details the process for a survivor completing a line separation request. As a threshold matter, we interpret the Safe Connections Act to limit access to ''emergency communications support'' in the designated program to those survivors that submit a completed line separation request. Is this interpretation supported by the statute? If not, how should we interpret the language in the Safe Connections Act referring to survivors who ''meet the requirements under section 345(c)(1)''? While we believe that the Safe Connections Act limits the opportunity for support to survivors that have submitted a line separation request, can a survivor ''meet the requirements under section 345(c)(1)'' if they can demonstrate that they are a survivor of a covered act by producing certain documentation?

142. The Safe Connections Act also requires that a survivor be ''suffering from financial hardship'' to obtain emergency communications support from the designated program. For survivors who leave abusive environments, experiencing financial instability is a common occurrence as a result of increased expenses and economic dependency on former partners. Given the common connection between domestic violence and financial instability, we seek comment on whether we should presume that survivors of domestic violence are suffering from financial hardship and therefore accept documentation of domestic violence as demonstrative of financial hardship. Does the Safe Connections Act allow us to adopt such an approach? Would this interpretation give sufficient meaning to the Safe Connections Act's reference to ''financial hardship''? Alternatively, does the Safe Connections Act require us to prescribe demonstration of actual, rather than presumed, financial hardship for purposes of participation in the designated program? Would it be more appropriate to establish criteria allowing a survivor to demonstrate that their abuser had cut them off from prior financial resources to substantiate financial hardship? If so, what should we require to substantiate this claim when the survivor's existing financial documentation may not otherwise demonstrate financial hardship?

143. In response to our *Notice of Inquiry,* the Electronic Privacy Information Center (EPIC) and other advocacy groups proposed that the Commission allow survivors to self-certify financial hardship. They suggest that because survivors who leave abusive situations often lack access to financial documentation, the Commission should not require survivors to submit any income-verifying documentation. This approach would reduce the barriers of participation for survivors and help survivors access the benefits of the designated program. We believe that, under this approach, any waste, fraud, and abuse concerns could be mitigated by the requirement that survivors also demonstrate that they have met the requirements of section 345(c)(1) and the six-month limitation on receiving emergency communications support. We seek comment on this proposal to allow survivors to self-certify financial hardship. What are the benefits and disadvantages of this approach? If we adopted this approach, should we require survivors to submit an affidavit, as suggested by the NVRDC, as part of the self-certification of financial hardship status? Should any such affidavit or self-certification be submitted under penalty of perjury? Would requiring an affidavit be a barrier preventing survivors from accessing emergency communications support? Should we require that any certification or affidavit be notarized to ensure the veracity of the identity of the signer, and what burdens would a notarization requirement impose on survivors? Alternatively, would allowing trusted third parties such as shelters or social workers to certify the financial hardship status of survivors allow survivors to access emergency communication services while mitigating any risk of

waste, fraud, or abuse? In contrast, would requiring a third-party certification present a barrier to survivor participation in the designated emergency communication support program, as EPIC argues? If we allowed for other methods of demonstrating financial hardship beyond income, what documentation should we require from survivors to explain their financial hardship? How could we standardize the reviews of such submissions to ensure that the Commission and USAC operate consistently? Should we direct the Wireline Competition Bureau to work with USAC to develop a standardized certification form, which would clearly define financial hardship to survivors and other entities, for any self-certification efforts? Does the fact that the emergency communications support contemplated by the Safe Connections Act is temporary reduce the risk of waste, fraud, or abuse connected with survivor self-certification?

144. We also seek comment on whether we should allow survivors who are facing temporary financial hardship to receive emergency communications support. Some survivors who have reliable sources of income nevertheless face financial instability or hardship as a result of high temporary or short-term expenses associated with leaving an abusive relationship. Survivors may need to pay expensive medical bills, cover new housing and transportation costs, and find new childcare arrangements, all of which can lead to financial instability. If we allow survivors to qualify for emergency communications support who are facing temporary financial hardship, how should we define temporary financial hardship? Would showings of temporary financial hardship have to be tied to the survivor's income at a particular point in time, or are there other types of documentation that survivors could submit to demonstrate temporary financial hardship? Are there benefit programs that are available to survivors experiencing temporary financial hardship, the participation in which we should accept as qualifying a survivor to participate in the designated program? Does the Safe Connections Act permit us to establish a process for survivors who are experiencing temporary financial hardship to obtain emergency communications support?

145. Alternatively, we could define financial hardship to mirror the ACP eligibility requirements, which are broader than the Lifeline eligibility requirements, even if we deem Lifeline the designated program. This approach would allow many survivors who participate in qualifying programs to have their eligibility automatically confirmed, allowing them to ''enroll in the designated program as quickly as feasible'' as required by the Safe Connections Act. Moreover, the more expansive eligibility criteria for the ACP will provide additional ways for survivors to demonstrate financial hardship, and will allow providers and USAC to leverage existing connections and documentation requirements to confirm eligibility. We seek comment on this approach. What are the benefits associated with this approach? What are the burdens or barriers that this approach might impose on survivors? Is the income threshold of 200% of the Federal Poverty Guidelines used in the ACP consistent with the Safe Connections Act's goal to allow survivors to get emergency access to the designated program? Are there federal or state benefit programs targeted to survivors whose eligibility standards we could use as a model? Are there any other qualifying benefit programs that we should consider including as part of our definition of financial hardship, and in particular programs targeted at survivors? Are there other approaches that we can use to define financial hardship that are not directly tied to survivors' income?

146. Both Lifeline and the ACP typically require subscribers to demonstrate their eligibility by submitting either proof of income or participation in a qualifying benefit program. The Lifeline program and the ACP have similar approaches for consumers to document their income. For instance, subscribers can demonstrate eligibility on the basis of income by submitting documentation such as tax returns or pay-stubs. If we were to keep a similar approach for survivors entering the designated program, we seek comment on whether and what income documentation we should require survivors to submit to demonstrate they are experiencing financial hardship. Given the unique challenges faced by many survivors in accessing financial information, should we require survivors to submit documents to demonstrate financial hardship prior to enrollment in the designated program, within a certain amount of time after enrollment, or at all? If we adopted a delayed documentation approach, should we permit service providers to claim reimbursement before documentation is confirmed? Would a delayed documentation approach limit service providers' willingness to provide support to survivors if they were unable to claim reimbursement until survivor documentation was approved? If we require survivors to submit documentation to demonstrate financial hardship, what documentation should we collect? Are there other types of income verifying documents that we could allow survivors to submit beyond tax returns and pay stubs?

3. Program Application and Enrollment

147. The Safe Connections Act also directs the Commission to allow a survivor suffering from financial hardship to ''enroll in the designated program as quickly as is feasible.'' We therefore seek comment on ways in which we can improve (1) the application process for survivors suffering from financial hardship that have successfully gone through the line separation process; (2) the application process for such survivors that were unable to obtain a line separation because of some technical infeasibility; and (3) the application and enrollment process for survivors generally. We also seek comment on how to best approach enrollments for emergency communications support in the NLAD opt-out states or through the ACP's alternative verification process (AVP).

148. We first seek comment on the eligibility determination process for survivors who have successfully completed the line separation process. We propose that survivors should be able to submit documentation of a successful line separation request to qualify for the emergency communications support. Given the potential for variation across service providers, we anticipate that USAC may need to engage in reviews of information documenting a successful line separation request. Is there a way in which the Commission and USAC can standardize confirmation of line separation requests such that USAC will be able to more quickly review such documentation and confirm that a subscriber can participate in the designated program? Should the service provider be required to provide to USAC certification or other documentation confirming the successful line separation request? Would confirmation of a line separation request alone be too ambiguous as lines can be separated for reasons not contemplated by the Safe Connections Act? Might there be ways in which USAC could confirm that a line separation request was tied to an individual's status as a survivor? If a survivor had a line separated by a service provider that also participates in the designated program, would it be appropriate to not require line

separation information from the survivor at the time of application and instead rely upon the service provider to maintain that documentation and share it with USAC as part of any program integrity or audit inquiries?

149. The Safe Connections Act also requires the Commission to consider how it might support survivors suffering from financial hardship who attempted to complete a line separation request but were unable to complete that request because of some technical infeasibility. In such situations, should documentation of that outcome be sufficient for a survivor to confirm their status as a survivor and enroll in the designated program? How can USAC best assess the veracity of these notices of technical infeasibility that survivors receive from service providers? Are there ways in which the Commission or USAC can work with service providers to standardize such notices? If the line separation request was processed but confirmed unsuccessful, can it be presumed that the survivor submitted all appropriate documentation to the service provider to confirm their survivor status, or should USAC require that documentation and independently review these materials? Are there ways in which service providers might share confirmation of unsuccessful line separation requests directly with USAC? After USAC has confirmed that a line separation request was submitted but unable to be completed because of a technical infeasibility, how might the survivor be able to enter the designated program? Should the survivor be able to receive the designated program's benefit on their existing account, even if shared with an abuser? We presume that survivors should be permitted to apply the designated program's benefit on any new qualifying service not tied to the abuser, but does that present any unique challenges for survivors and service providers?

150. As part of the process for applying to either Lifeline or the ACP, consumers are required to submit information to USAC's National Verifier that will allow for confirmation of the consumer's identity. By gathering this information, USAC is better able to confirm the identity of a consumer and prevent duplicate enrollments in the Commission's affordability programs. We recognize, however, that providing this type of identity information could be difficult for survivors that may be trying to physically and financially distance themselves from their abusers. As such, we seek comment on whether and how we might gather similar identity information for the process of verification while being sensitive to the privacy and safety needs of survivors. Would the type of information that survivors need to provide as part of the line separation process typically include all of the information that the Commission already collects for its affordability programs? Would this make providing the same information to USAC less concerning for survivors suffering financial hardship, particularly if such survivors will need to provide details of their line separation request? Under the Privacy Act of 1974, the Federal Information Security Modernization Act of 2014 (FISMA), and applicable guidance, the Commission and USAC already have strong privacy protections in place for consumer information; are those measures sufficient for information collected from survivors? Are there best practices that governmental organizations and businesses use for dealing with survivor information, which USAC should implement here, that go above and beyond standard privacy protections? Are there ways in which we can modify the information collected, perhaps by allowing a consumer to submit their identity information with an alias name? If we allow survivors to submit less identity information as part of their application to the designated program, how might we effectively manage program integrity, administration, and audit efforts?

151. Current address information can also be very sensitive information for survivors to share. If such location information is disclosed, it may allow an abuser to locate a survivor, and because of this concern, survivors may not be residing at one location or have a fixed address. They also may be hesitant to seek emergency communications support if they believe their location may be disclosed. To meet these challenges, we seek comment on how we might adjust the address requirements for the designated program to best support survivors suffering from financial hardship. Should USAC rely exclusively on any address information provided as part of the line separation documentation it might receive from survivors suffering financial hardship? Might such address information be inaccurate if the account, after the completion of a line separation request, is no longer tied to a specific address? Our Lifeline rules already contemplate temporary or duplicate addresses for applicants. Does this approach sufficiently resolve the potential risks to survivors suffering from financial hardship? Would it be appropriate to require no address if the applicant can confirm their identity through providing other personal information like their full actual name or date of birth? Would it be appropriate to allow the address of a survivor support organization or other alias address to stand in as an applicant's residential address? Are these types of methods used in other areas and for other services where survivors might seek support?

152. Aside from the issues detailed above, we also seek comment on how the Commission and USAC should modify the designated program's forms to allow survivors suffering from financial hardship to receive support. As noted, we are interested in learning more about what information service providers might have about survivors by virtue of the line separation process and whether such information can be provided to USAC directly from service providers. We are sensitive to the possibility that survivors who would benefit most from participation in the designated program may be experiencing sudden and traumatic hardship, and we seek to make participation readily accessible without compromising the integrity of our programs. Thus, rather than requiring survivors to complete the designated program's full application process and provide their line separation material, would it be appropriate to require survivors to self-certify that they completed a line separation request, regardless of the outcome, as part of their application to participate in the designated program? If we were to adopt such a self-certification approach, we anticipate the need to require more identity information to confirm identity. Under this self-certification approach, we also anticipate needing information consistent with the Safe Connections Act to substantiate that the applicant is a survivor. Would that be appropriate? If we did not collect such information, how might the Commission and USAC confirm that only survivors suffering from financial hardship are enrolling in the program? Even if we do not adopt a self-certification approach for confirming that the survivor went through the line separation process, should we explore a more streamlined application for such survivors? If so, what information that is currently collected might not be appropriate for this community? Alternatively, are there questions or information that should be added to the current program application forms? Should such information be placed on a new supplemental form, similar to the Lifeline program's Household Worksheet? Would it be more

appropriate to develop an entirely new application process for survivors seeking to enter the designated program?

153. As part of the Lifeline and ACP enrollment process, consumers are required to have their eligibility confirmed before they can be enrolled into either program by a service provider. This is typically done by the consumer either interacting directly with the National Verifier or by working through a service provider system that confirms information through an application programming interface (API) connection to the National Verifier. After a consumer's qualification has been confirmed, including confirmation that the consumer is not already receiving the Lifeline or ACP benefit, then a service provider can enroll the consumer in NLAD and begin providing discounted service to that consumer. We do not intend to change this general process for survivors suffering financial hardship and seeking to participate in the designated program. However, we do seek comment on ways in which USAC can communicate to survivors and service providers that a survivor has been qualified to participate in the designated program. Should USAC provide survivors with anything different from what is currently provided to confirm qualification? Would it be preferable for USAC to provide a qualification number that will confirm a survivor's ability to participate in the designated program while also allowing them to minimize the amount of personal information they need to provide to their service provider? This approach might result in a qualification number that would allow the service provider to enroll the subscriber in NLAD without seeing the level of personal information that service providers currently see in NLAD. Would such an approach be too administratively burdensome for service providers to monitor and ensure compliance with the designated program's rules? How else might USAC work to categorize survivors in NLAD such that service providers will be aware that a particular subscriber might not be able to participate in the program longer than six months? Is such a categorization necessary?

154. As stated above, we seek comment on whether the Lifeline program or ACP should be the designated program for impacted survivors, and we further propose that survivors seeking to enroll in the designated program under the Safe Connection Act be qualified and enrolled using USAC's application and eligibility confirmation process throughout the country. In California, Texas, and Oregon, the state administrators currently confirm Lifeline eligibility and take measures to prevent duplicate enrollments. As such, consumers in these states apply through the state program administrators for state and federal Lifeline benefits. USAC partners with these states to ensure that their processes are in accordance with the federal Lifeline program's guidelines. Here, however, we propose that survivors in these states apply to participate in Lifeline as the designated program, through USAC's systems directly. USAC would confirm the eligibility of survivors to participate in the program and would work to address any potential duplicates. This would be similar to how broadband-only Lifeline subscribers apply and enroll in California, where the National Verifier stands in for the state administrator. By requiring USAC to review such enrollments we will ensure a standardized process for survivor documentation, greater flexibility to be responsive to survivor needs, a centralized repository for any potential line separation materials that might come from service providers, and a unified process around potential customer transition efforts after the end of the six-month period. In proposing to adopt this approach, we would still permit those with system access to support survivors in the application process through access to USAC's systems. Should we also permit such access to be expanded to community-based organizations that work with survivors? If we did expand access to USAC's systems beyond what is currently permitted, should that access be limited in any particular ways to protect the personal information of survivors and other program participants? We seek comment on these proposals.

155. If the Commission were to choose the ACP as the designated program, we propose that all survivor eligibility determinations should be completed through the National Verifier. As discussed above with Lifeline, we believe that this approach will improve the process for survivors. As such, we propose that providers with approved AVPs would be obligated to accept determinations from the National Verifier. This would be limited to survivors seeking to enter the ACP as the designated program and would not impact the general processes in place for AVP enrollment beyond that group. We seek comment on this proposal.

156. *General Program Requirements.* The Lifeline program and the ACP both have general requirements to which program participants and service providers must adhere throughout their participation in the programs. For instance, both programs are limited to one benefit per household and both programs also allow a provider to claim reimbursement only for subscribers who actually use their service. We propose that the general rules and requirements of the designated program will remain in effect for survivors and service providers except to the extent that they are in conflict with the statutory and regulatory requirements established specifically for the emergency communications support. This would include such requirements as the programs' non-usage de-enrollment requirements, record retention requirements, and audit requirements. We note that we do not expect annual recertification to be an issue because survivors must qualify through the regular program processes to participate in the designated program beyond their initial six-month period. Our proposal reflects our understanding that the programs' rules were established to ensure that the limited resources of each program go towards individuals that genuinely need the service and will use the service, and that a number of these rules, such as those that deal with enrollment representatives and the payment of commissions, were adopted to address specific program integrity concerns that we think will continue to be relevant in the context of our efforts to offer emergency communications support. As such, we do not believe it would be appropriate to modify these types of requirements. However, we seek comment on this proposal and are particularly interested in whether survivors would be significantly and negatively impacted by the continuation of certain generally applicable programmatic rules in our affordability programs.

157. While we propose to maintain the programs' rules largely in place, we seek comment on how the programs' limit of one benefit per household would interact with a definition of survivors that may implicate individuals living in different households. If we adopt an expansive definition to permit individuals to be caregivers to those not in their own household, should we permit multiple enrollments, including an enrollment for the caregiver's household and an enrollment for the household of the individual against whom a covered act was committed? What administrative challenges would exist with such an approach? How might the Commission and USAC secure proof of the

relationship between individuals and protect the designated program from waste, fraud, and abuse?

4. Additional Program Concerns

158. *Survivor Transition and Outreach.* The Safe Connections Act allows qualifying survivors to participate in the designated program only for six months. We propose to interpret this provision as allowing a survivor's service provider to receive six monthly disbursements of support from the designated program. Is this interpretation consistent with the Safe Connections Act? Are there other ways in which we can measure months when a consumer might be enrolling in the middle of a month? If a survivor uses the program for six months and then needs to use the program again several years later, could the designated program provide an additional period of support, or does the Safe Connections Act only permit six months of support over the lifetime of the survivor? We propose that such repeated periods of support would be permissible. To that end, should we require a certain period of time between periods of support before a survivor that meets the requirements of the Safe Connections Act would be able to re-enter the designated program and receive emergency communications support? If so, we seek comment on the appropriate length of time before a survivor could re-enroll into the designated program based on the Safe Connections Act. In such situations, we presume that a survivor could not rely on their original line separation request and must undergo a new line separation process. Would such a presumption be too limiting? Would allowing survivors to rely on their original line separation request circumvent the Safe Connections Act's six month participation limitation?

159. We also anticipate that there may be situations where a survivor suffering financial hardship seeks to receive service from more than one service provider over the six-month time period or may seek to receive support sporadically, such that the impacted survivor may not have a single six-month time period of participation. We believe that either approach is permitted by the Safe Connections Act and seek comment on our understanding of our legal authority to permit such fluctuations in how a survivor might interact with their service. Should we place any limitations on survivors seeking to change their service provider during a single six-month enrollment period? How might such an approach operate if the designated program is the Lifeline program? Would the approach differ if the designated program is the ACP? In situations of sporadic enrollments over time, what new material, if any, should we require from survivors to re-enter the designated program? Would their original application be sufficient or should survivors be required to submit new applications? Would survivors be obligated to pursue new line separation requests, even when they have not fully utilized six months of emergency communications support? We also propose that USAC should be responsible for monitoring participation in the program to ensure compliance with the Safe Connections Act's time requirement. Through the NLAD, USAC can monitor changes in service providers and calculate a survivor's length of participation in the program. We seek comment on this proposal. Would USAC need to collect any additional information, either from service providers or participating survivors, to complete this work?

160. We also believe that USAC is best positioned to handle transition efforts after the survivor has completed their six months in the designated program. Survivors are able to participate in the Commission's affordability programs indefinitely if they can satisfy the programs' eligibility requirements, and the Safe Connections Act specifically endorses survivors transitioning to the program beyond six months if they meet the designated program's eligibility requirements. We anticipate that USAC will have the appropriate contact information for survivors participating in the designated program, and we propose that USAC directly send outreach material to such survivors explaining how they can meet the eligibility requirements of the Lifeline program and the ACP and receive discounted service beyond their original six-month emergency period. However, if we implement protections for survivors allowing them to submit alias addresses or names as part of the application process, how might that impact any transition efforts? We propose that USAC send this material to participating survivors 60 days before the end of emergency communications support, and that such outreach should include information about participating service providers in the survivor's area. Participating survivors should be free to change their service provider at this time if they choose. Should the service provider also be allowed to communicate with the survivor about their potentially ending benefits? What are the best methods for a provider to contact a survivor? Through SMS-text messages, voice calls, or app-based chat with the participant? At the end of 60 days, if the survivor has not successfully confirmed their eligibility to participate in the designated program beyond six months, we propose that USAC should de-enroll the survivor from the program within five business days of informing the service provider that the subscriber is no longer eligible to receive emergency communications support. We seek comment on this proposal and any potential challenges that it might pose for survivors suffering from financial hardship or service providers.

161. We also seek comment on how the support might operate if we permit survivors suffering from temporary financial hardship to enter the designated program. If a survivor asserts temporary financial hardship and that financial hardship is resolved within six months, would the Safe Connections Act require the survivor to be removed from the designated program? How might we work to implement such an approach? Should we require survivors to notify USAC of any resolution of their financial hardship? Are there other methods by which USAC might be able to learn of this change in circumstances? Would a requirement for early removal once a financial hardship has been resolved be too administratively burdensome for survivors and other stakeholders?

162. *Privacy Concerns.* As discussed in the *Notice of Inquiry* and throughout this *NPRM,* consumer privacy protections are always important to the Commission and USAC. However, we recognize that these concerns are heightened for survivors. The Safe Connections Act directs the Commission to consider the confidentiality of survivor information. To this end, we note that the systems that USAC uses to manage the Lifeline program and the ACP collect only data elements that have been prescribed by the Commission to allow for the effective management of the programs and their protection against potential waste, fraud, and abuse.

163. We seek comment, however, on any other steps the Commission and USAC can take to ensure survivors' safety, while continuing to preserve program integrity and customer service. Should the Commission and USAC consider different approaches for subscriber data in NLAD and the National Verifier than those already implemented? For instance, would it be appropriate to mask certain subscriber data in USAC's systems from service providers? With such an approach, what information would service providers

need to know to provide the discounted service and claim subscribers for reimbursement? We also note that USAC manages a call center for the affordability programs to support program participants' enrollment, recertification, and service needs. What processes could USAC put in place to avoid the unintentional release of data to an individual who is not a survivor but who may know some or all of the survivor's personally identifiable information? We suspect that abusers may try to exploit a call center to learn where a survivor might reside. We seek comment on the frequency of this type of behavior, and whether there are best practices to prevent such data leakage. How can USAC and the Commission best inform survivors about potential opportunities for lawful disclosure of information, such as disclosures that may be necessary in response to litigation?

164. Our focus has been on the privacy concerns of survivors, but we also seek comment on any privacy concerns that might arise for the Commission when it comes to personal information associated with alleged abusers. As we may be relying upon only allegations of abuse what might the Commission do to protect the personal information, and ensure the safety, of alleged abusers that may be disclosed in connection with a survivor seeking emergency communications support? What concerns are unique to alleged abusers that may not already be addressed by our general privacy requirements? Are there specific pieces of information more likely to inadvertently identify an abuser than others?

165. Finally, we note that USAC regularly reports programmatic data about both the Lifeline program and the ACP, often including aggregate subscriber data that is sometimes broken down at the county, state, and ZIP code levels. What considerations should the Commission and USAC make when making similar subscriber enrollment information available? Should the Commission filter out survivor enrollments from such aggregate reports? What are the benefits and risks of reporting the total number of survivors enrolled in the programs?

166. *Program Evaluation.* The Safe Connections Act requires the Commission to complete an evaluation of the designated program two years after the completion of this rulemaking. The evaluation is specifically meant to examine the effectiveness of the support offered to survivors suffering from financial hardship and to assess the detection and elimination of waste, fraud, and abuse with respect to the support offered. We seek comment on ways in which the Commission can satisfy this requirement. What resources can the Commission rely upon to solicit comprehensive program performance data? Are there ways in which we can assess the impacts of the designated program's efforts on survivors more broadly? Would surveying program participants be a viable option for gaining data or might we expect minimal response rates given survivors' privacy concerns? Would shelters and other support programs be appropriate survey recipients, and would they have responsive information to help the Commission understand the program's effectiveness? Are there questions that we might be able to pose to survivors at enrollment or during any potential transition periods that might inform our understanding of the program's effectiveness? Regarding an assessment of our efforts to combat waste, fraud, and abuse, are there specific pieces of data that would be helpful to receive from service providers unique to this population? Alternatively, would USAC's regular program integrity and auditing efforts yield enough information to develop an understanding of our ability to protect program funding?

D. Savings Clause

167. Section 7 of the Safe Connections Act is a savings clause providing that nothing in the Safe Connections Act abrogates, limits, or otherwise affects the Communications Assistance for Law Enforcement Act (CALEA), our regulations implementing the statute, or any amendments to either the statute or our implementing regulations. Despite the provision appearing to be self-effectuating, should we nevertheless incorporate this savings clause into the rules that we adopt in this proceeding? Are there any changes that we should make to our proposed rules to account for operation of the clause that we do not discuss above? For example, would the line separation process affect service providers' ability to comply with CALEA requests pertaining to any devices and telephone numbers associated with line separations?

E. Promoting Digital Equity and Inclusion

168. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

II. Procedural Matters

169. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule and policy changes contained in this Notice of Proposed Rulemaking. The IRFA is set forth below.

III. Initial Regulatory Flexibility Analysis

170. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (*NPRM*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

171. In the *NPRM,* the Commission begins the process of implementing the Safe Connections Act of 2022 (Safe Connections Act), enacted on December 7, 2022. The legislation amends the Communications Act of 1934 (Communications Act) to require mobile service providers to separate the line of a survivor of domestic violence (and other related crimes and abuse), and any individuals in the care of the survivor, from a mobile service contract shared with an abuser within two business

days after receiving a request from the survivor. The Safe Connections Act also directs the Commission to issue rules, within 18 months of the statute's enactment, implementing the line separation requirement. The Safe Connections Act also requires the Commission to designate either the Lifeline program or the Affordable Connectivity Program (ACP) as the vehicle for providing survivors suffering financial hardship with emergency communications support for up to six months. Further, the legislation requires the Commission to open a rulemaking within 180 days of enactment to consider whether to, and how the Commission should, establish a central database of domestic abuse hotlines to be used by service providers and require such providers to omit, subject to certain conditions, any records of calls or text messages to the hotlines from consumer-facing call and text message logs. The *Notice* proposes rules as directed by these three statutory requirements. We believe that these measures will aid survivors who lack meaningful support and communications options when establishing independence from an abuser.

B. Legal Basis

172. The legal basis for any action that may be taken pursuant to this *NPRM* is contained in sections 1, 4(i), 4(j), 254, 345, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 254, 345, and 403, section 5(b) of the Safe Connections Act of 2022, Public Law 117–223, 136 Stat. 2280, and section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, as amended by the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

173. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

174. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

175. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

176. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

177. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

178. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

179. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed

local exchange service providers. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

180. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

181. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

182. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 public notice. Based on industry data, only six cable system operators have more than 677,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

183. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

184. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

185. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

186. *Wireless Broadband internet Access Service Providers (Wireless ISPs*

or WISPs). Providers of wireless broadband internet access service include fixed and mobile wireless providers. The Commission defines a WISP as ''[a] company that provides end-users with wireless access to the internet[.]'' Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees.

187. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general, as well as on terrestrial fixed wireless broadband providers in general, we believe that the majority of wireless internet access service providers can be considered small entities.

188. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

189. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

190. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.* dial-up ISPs) or voice over internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

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

191. The *NPRM* seeks comment on proposed rules that would help survivors separate service lines from accounts that include their abusers, protect the privacy of calls made by survivors to domestic abuse hotlines, and support survivors that pursue a line separation request and face financial hardship through the Commission's affordability programs. The proposed actions could potentially result in additional equipment costs, new or modified recordkeeping, reporting, or other compliance requirements for covered providers such as facilities-based Mobile Network Operators, as well as resellers/Mobile Virtual Network Operators. Among other things, the proposed actions would require covered providers, within two business days of receiving a completed request from a survivor, to (1) separate the line of the survivor, and the line of any individual in the care of the survivor, from a shared mobile service contract, or (2) separate the line of the abuser from a shared mobile service contract. The *NPRM* seeks comment as to the potential impact to small entities of the proposed timeframe. Entities, especially small businesses, are encouraged to quantify

the costs and benefits of any reporting, recordkeeping, or compliance requirement that may be established in this proceeding.

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

192. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

193. The *NPRM* seeks comment on the particular impacts that the proposed rules may have on small entities. Specifically, the *NPRM* seeks comment throughout on the burdens of the proposed rules, and any alternatives, on covered providers, including small providers. The *NPRM* also seeks comment on an appropriate timeframe for covered providers to implement the necessary technical and programmatic changes to comply with the requirements under section 345 and our proposed rules, as well as whether there are challenges unique to small covered providers that may require a longer implementation period than larger covered providers. Additionally, the *NPRM* seeks comment on the ways in which program changes to either the Lifeline program or the ACP might impact both consumers and service providers participating in either program. Service providers participating in these programs may include small providers. Further, the *NPRM* seeks comment on whether small service providers should either be exempted or provided additional time to implement the proposed obligation to omit from consumer-facing logs of calls and text messages calls to and text messages delivered to a central database of domestic abuse hotlines that the Commission proposed to establish.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

194. None.

IV. Ordering Clauses

195. Accordingly, *it is ordered*, pursuant to the authority contained in sections 1, 4(i), 4(j), 254, 345, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 254, 345, and 403, section 5(b) of the Safe Connections Act of 2022, Public Law 117–223, 136 Stat. 2280, and section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, as amended by the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, that this Notice of Proposed Rulemaking *is adopted.*

196. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subject

47 CFR Part 54

Internet telecommunications, Reporting and recordkeeping requirement, Telephone.

47 CFR Part 64

Communications, Communications common carriers, Communications equipment, Individuals with disabilities, Reporting and recordkeeping requirements, Security measures, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 54 and 64 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted; Public Law 117–223, sec. 5, 136 Stat 2280, 2285–88.

■ 2. Amend § 54.400 by adding paragraphs (q) through (s) to read as follows:

§ 54.400 Terms and definitions.

* * * * *

(q) *Survivor.* ''Survivor'' shall have the definition as applied in 47 CFR 64.6400(q).

(r) *Emergency Communications Support.* ''Emergency communications support'' means support received through the Lifeline program by qualifying survivors pursuant to the Safe Connections Act of 2022, Public Law 117–223.

(s) *Financial Hardship.* ''Financial hardship'' means that a consumer has met the requirements of § 54.1800(j)(1) through (6) of subpart R of this part.

■ 3. Amend § 54.405 by adding paragraph (e)(6) to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

* * * * *

(e) * * *

(6) *De-enrollment from emergency communications support.* Notwithstanding paragraph (e)(1) of this section, upon determination by the Administrator that a subscriber receiving emergency communications support has exhausted the subscriber's six months of support and has not been able to qualify to participate in the Lifeline program as defined by § 54.401 of this subpart, the Administrator must de-enroll the subscriber from participation in that Lifeline program within five business days. An eligible telecommunications carrier shall not be eligible for Lifeline reimbursement for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

■ 4. Add § 54.424 to subpart E to read as follows:

§ 54.424 Emergency Communications Support for Survivors.

(a) *Confirmation of subscriber eligibility.* All eligible telecommunications carriers must implement policies and procedures for ensuring that subscribers receiving emergency communications support from the Lifeline program are eligible to receive such support. An eligible telecommunications carrier must not seek reimbursement for providing Lifeline service to a subscriber, based on that subscriber's eligibility to receive emergency communications support, unless the carrier has received from the National Verifier:

(1) Notice that the prospective subscriber has submitted a line separation request as set forth in 47 CFR 64.6401;

(2) Notice that the prospective subscriber has demonstrated or self-certified to their financial hardship status as defined in § 54.400(s); and

(3) A copy of the subscriber's certification that complies with the requirements set forth in § 54.410(d).

(4) An eligible telecommunications carrier must securely retain all information and documentation

provided by the National Verifier consistent with § 54.417.

(b) *Emergency communications support amount.* Emergency communications support in the amount of up to $9.25 per month will be made available, from the Lifeline program, to eligible telecommunications carriers providing service to qualifying survivors. An eligible telecommunications carrier must certify to the Administrator that it will pass through the full amount of support to the qualifying survivor and that it has received any non-federal regulatory approvals necessary to implement the rate reduction.

(1) This base reimbursement can be applied to survivors receiving service that meets either the minimum service standard for voice service or broadband internet access service, as determined in accordance with § 54.408.

(2) Additional federal Lifeline support of up to $25 per month will be made available to an eligible telecommunications carrier providing emergency communications support to an eligible survivor resident of Tribal lands, as defined in § 54.400(e), to the extent that the eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tribal lands support amount to the qualifying eligible resident of Tribal lands and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(c) *Emergency communications support duration.* Qualified survivors shall be eligible to receive emergency communications support for a total of no more than six months. This limitation applies across all eligible telecommunications carriers, and the Administrator will inform eligible telecommunications carriers when participating survivors have reached their limit in emergency communications support. Survivors that have reached their emergency communications support limit may still participate in the Commission's affordability programs if they can satisfy the eligibility requirements of the program.

(d) *Lifeline rules applicable.* Other Lifeline rules in this subpart not contradicted by provisions of this section shall remain in force to manage the participation of survivors receiving emergency communications support.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 345, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Public Law 115–141, Div. P, sec. 503, 132 Stat. 348, 1091; Pub. L. 117–223, sec. 5, 136 Stat 2280, 2285–88.

■ 6. Add subpart II, consisting of §§ 64.6400 through 64.6404, to read as follows:

Subpart II—Communications Service Protections for Victims of Domestic and Other Violence

§ 64.6400 Definitions.

For purposes of this subpart:

(a) *Abuser.* The term ''abuser'' means an individual who has committed or allegedly committed a covered act, as defined in this subpart, against (1) an individual who seeks relief under this subpart; or (2) an individual in the care of an individual who seeks relief under this subpart.

(b) *Call.* The term ''call'' means a voice service transmission, regardless of whether such transmission is completed.

(c) *Consumer-Facing Logs of Calls and Text Messages.* The term ''consumer-facing logs of calls and text messages'' means any means by which a covered service provider or wireline provider of voice service presents a listing of telephone numbers to which calls or text messages were directed, regardless of, for example, the medium used (such as by paper, online listing, or electronic file), whether the call was completed or the text message was delivered, whether part of a bill or otherwise, and whether requested by the consumer or otherwise provided. The term includes oral and written disclosures by covered service providers and wireline providers of voice service of individual call and text message records.

(d) *Covered Act.* ''Covered act'' means conduct that constitutes (1) a crime described in section 40002(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a)), including, but not limited to, domestic violence, data violence, sexual assault, stalking, and sex trafficking; (2) an act or practice described in paragraph (11) or (12) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102) (relating to severe forms of trafficking in persons and sex trafficking, respectively); or (3) an act under State law, Tribal law, or the Uniform Code of Military Justice that is similar to an offense described in clause (1) or (2) of this paragraph. A criminal conviction or any other determination of a court shall not be required for conduct described in this paragraph to constitute a covered act.

(e) *Covered hotline.* The term ''covered hotline'' means a hotline related to domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, or any other similar act. Such term includes any telephone number on which more than a *de minimis* amount of counseling and/or information is provided on domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, or any other similar acts.

(f) *Covered provider.* ''Covered provider'' means a provider of a private mobile service or commercial mobile service, as those terms are defined in 47 U.S.C. 332(d).

(g) *Designated Program.* ''Designated program'' refers to the program designated by the Commission at 47 CFR 54.424 to provide emergency communications support to survivors.

(h) *Primary account holder.* ''Primary account holder'' means an individual who is a party to a mobile service contract with a covered provider.

(i) *Shared mobile service contract.* ''Shared mobile service contract'' means a mobile service contract for an account that includes not less than two lines of service, and does not include enterprise services offered by a covered provider.

(j) *Survivor.* ''Survivor'' means an individual who is not less than 18 years old and (1) against whom a covered act has been committed or allegedly committed; or (2) who cares for another individual against whom a covered act has been committed or allegedly committed (provided that the individual providing care did not commit or allegedly commit the covered act).

(k) *Text message.* The term ''text message'' has the meaning given such term in section 227(e)(8) of the Communications Act of 1934, as amended (47 U.S.C. 227(e)(8)).

(l) *Voice service.* The term ''voice service'' has the meaning given such term in section 4(a) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (47 U.S.C. 227b(a)).

§ 64.6401 Requests for Line Separations.

(a) A survivor seeking to separate a line from a shared mobile service contract pursuant to this subpart shall submit to the covered provider a line separation request requesting relief under section 345 of the Communications Act of 1934, as amended, and this subpart that identifies each line that should be separated. In the case of a survivor seeking separation of the survivor's line

(and/or the lines of individuals in the care of the survivor), the line separation request also must (1) state that the survivor is the user of that specific line, and (2) include an affidavit setting forth that an individual in the care of the survivor is the user of that specific line and that the individual is in the care of the survivor.

(b) A survivor seeking to separate a line or lines from a shared mobile service contract pursuant to this subpart must verify that an individual who uses a line under the shared mobile service contract has committed or allegedly committed a covered act against the survivor or an individual in the survivor's care by providing:

(1) A copy of a signed affidavit from a licensed medical or mental health care provider, licensed military medical or mental health care provider, licensed social worker, victim services provider, or licensed military victim services provider, or an employee of a court, acting within the scope of that person's employment; or

(2) A copy of a police report, statements provided by police, including military police, to magistrates or judges, charging documents, protective or restraining orders, military protective orders, or any other official record that documents the covered act.

(c) Notwithstanding 47 U.S.C. 222(c)(2), a covered provider; any officer, director, or employee of a covered provider; and any vendor, agent, or contractor of a covered provider that receives or processes line separation requests with the survivor's consent or as needed to effectuate the request, shall treat any information submitted by a survivor under this subpart as confidential and securely dispose of the information not later than 90 days after receiving the information. A covered provider shall not be prohibited from maintaining a record that verifies that a survivor fulfilled the conditions of a line separation request under this subpart for longer than 90 days after receiving the information so long as the covered provider also treats such records as confidential and securely disposes of them.

(d) Nothing in this section shall affect any law or regulation of a State providing communications protections for survivors (or any similar category of individuals) that has less stringent requirements for providing evidence of a covered act (or any similar category of conduct) than this section.

§ 64.6402 Separation of Lines from Shared Mobile Service Contract.

(a) Except as described in paragraph (b) of this section, not later than two businesses days after receiving a completed line separation request from a survivor pursuant to § 64.6401, a covered provider shall, with respect to a shared mobile service contract under which the survivor and the abuser each use a line:

(1) Separate the line of the survivor, and the line of any individual in the care of the survivor, from the shared mobile service contract; or

(2) Separate the line of the abuser from the shared mobile service contract.

(b) If a covered provider cannot operationally or technically effectuate a line separation request, the covered provider shall:

(1) Notify the survivor who submitted the request of that infeasibility at the time of the request or, in the case of a survivor who has submitted the request using remote means, not later than 2 business days after receiving the request; and

(2) Provide the survivor with information about other alternatives to submitting a line separation request, including starting a new line of service.

(c) A covered provider shall offer a survivor the ability to submit a line separation request through secure remote means that are easily navigable, provided that remote options are commercially available and technically feasible.

(d) A covered provider shall notify a survivor seeking relief under this subpart, in clear and accessible language, that the covered provider may contact the survivor, or designated representative of the survivor, to confirm the line separation, or if the covered provider is unable to complete the line separation for any reason. A covered provider shall provide this notification through remote means, provided that remote means are commercially available and technically feasible.

(e) When completing a line separation request submitted by a survivor through remote means, a covered provider shall allow the survivor to elect in the manner in which a covered provider may:

(1) Contact the survivor, or designated representative of the survivor, in response to the request, if necessary; or

(2) Notify the survivor, or designated representative of the survivor, of the inability of the covered provider to complete the line separation.

(f) A covered provider shall notify the survivor of the date on which the covered provider intends to give any formal notice to the primary account holder if a covered provider separates a line from a shared mobile service contract under this section and the primary account holder is not the survivor.

(g) A covered provider that receives a line separation request from a survivor pursuant to this subpart shall inform the survivor of:

(1) The existence of the designated program;

(2) Who qualifies to participate in the designated program under 47 CFR 54.424; and

(3) How to participate in the designated program under 47 CFR 54.424.

(h) A covered provider may not make separation of a line from a shared mobile service contract under paragraph (a) of this section contingent on any limitation or requirement other than those described in paragraphs (i) and (j) of this section, including, but not limited to:

(1) Payment of a fee, penalty, or other charge;

(2) Maintaining contractual or billing responsibility of a separated line with the provider;

(3) Approval of separation by the primary account holder, if the primary account holder is not the survivor;

(4) A prohibition or limitation, including payment of a fee, penalty, or other charge, on number portability, provided such portability is technically feasible;

(5) A prohibition or limitation, including payment of a fee, penalty, or other charge, on a request to change phone numbers;

(6) A prohibition or limitation on the separation of lines as a result of arrears accrued by the account; or

(7) An increase in the rate charged for the mobile service plan of the primary account holder with respect to service on any remaining line or lines.

(i) Nothing in paragraph (h) of this section shall be construed to require a covered provider to provide a rate plan for the primary account holder that is not otherwise commercially available.

(j) Notwithstanding paragraph (g) of this section, beginning on the date on which a covered provider transfers billing responsibilities for and use of a telephone number or numbers to a survivor under paragraph (a)(1) of this section, the survivor shall assume financial responsibility, including for monthly service costs, for the transferred telephone number or numbers, unless ordered otherwise by a court. Upon the transfer of a telephone number under paragraph (a)(2) of this section to separate the line of the abuser from a shared mobile service contract, the survivor shall have no further financial responsibilities to the transferring covered provider for the

services provided by the transferring covered provider for the telephone number or for any mobile device associated with the telephone number.

(k) Notwithstanding paragraph (g) of this section, beginning on the date on which a covered provider transfers billing responsibilities for and rights to a telephone number or numbers to a survivor under paragraph (a)(1) of this section, the survivor shall not assume financial responsibility for any mobile device associated with the separated line, unless the survivor purchased the mobile device, or affirmatively elects to maintain possession of the mobile device, unless otherwise ordered by a court.

§ 64.6403 Notice of Line Separation Availability to Consumers.

A covered provider shall make information about the line separation options and processes described in this subpart readily available to consumers:

(a) On the website and mobile application of the provider;

(b) In physical stores; and

(c) In other forms of public-facing consumer communication.

§ 64.6404 Protection of the Privacy of Calls and Text Messages to Covered Hotlines.

All covered providers and wireline providers of voice service shall:

(a) Omit from consumer-facing logs of calls and text messages any records of calls or text messages to covered hotlines in the central database established by the Commission.

(b) Maintain internal records of calls and text messages excluded from call and text logs pursuant to paragraph (a) of this section.

(c) Be responsible for downloading the initial and subsequent updates to the central database established by the Commission.

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FEDERAL REGISTER

Vol. 88 Monday,

No. 48 March 13, 2023

Part IV

The President

Notice of March 10, 2023—Continuation of the National Emergency With Respect to Iran

Federal Register
Vol. 88, No. 48
Monday, March 13, 2023

Presidential Documents

Title 3—

The President

Notice of March 10, 2023

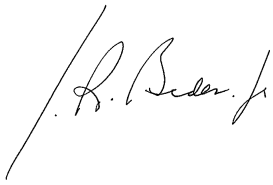
Continuation of the National Emergency With Respect to Iran

On March 15, 1995, by Executive Order 12957, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran. On May 6, 1995, the President issued Executive Order 12959, imposing more comprehensive sanctions on Iran to further respond to this threat. On August 19, 1997, the President issued Executive Order 13059, consolidating and clarifying those previous orders. The President took additional steps pursuant to this national emergency in Executive Order 13553 of September 28, 2010; Executive Order 13574 of May 23, 2011; Executive Order 13590 of November 20, 2011; Executive Order 13599 of February 5, 2012; Executive Order 13606 of April 22, 2012; Executive Order 13608 of May 1, 2012; Executive Order 13622 of July 30, 2012; Executive Order 13628 of October 9, 2012; Executive Order 13645 of June 3, 2013; Executive Order 13716 of January 16, 2016, which revoked Executive Orders 13574, 13590, 13622, 13645, and provisions of Executive Order 13628; Executive Order 13846 of August 6, 2018, which revoked Executive Orders 13716 and 13628; Executive Order 13871 of May 8, 2019; Executive Order 13876 of June 24, 2019; Executive Order 13902 of January 10, 2020; and Executive Order 13949 of September 21, 2020.

The actions and policies of the Government of Iran—including its proliferation and development of missiles and other asymmetric and conventional weapons capabilities, its network and campaign of regional aggression, its support for terrorist groups, and the malign activities of the Islamic Revolutionary Guard Corps and its surrogates—continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.

For these reasons, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran declared in Executive Order 12957. The emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, in connection with the hostage crisis. This renewal, therefore, is distinct from the emergency renewal of November 8, 2022.

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



THE WHITE HOUSE,
March 10, 2023.

[FR Doc. 2023–05300
Filed 3–10–23; 11:15 am]
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