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Title 3—

Executive Order 14093 of March 27, 2023

The President

Prohibition on Use by the United States Government of Commercial Spyware That Poses Risks to National Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. Technology is central to the future of our national security, economy, and democracy. The United States has fundamental national security and foreign policy interests in (1) ensuring that technology is developed, deployed, and governed in accordance with universal human rights; the rule of law; and appropriate legal authorization, safeguards, and oversight, such that it supports, and does not undermine, democracy, civil rights and civil liberties, and public safety; and (2) mitigating, to the greatest extent possible, the risk emerging technologies may pose to United States Government institutions, personnel, information, and information systems.

To advance these interests, the United States supports the development of an international technology ecosystem that protects the integrity of international standards development; enables and promotes the free flow of data and ideas with trust; protects our security, privacy, and human rights; and enhances our economic competitiveness. The growing exploitation of Americans' sensitive data and improper use of surveillance technology, including commercial spyware, threatens the development of this ecosystem. Foreign governments and persons have deployed commercial spyware against United States Government institutions, personnel, information, and information systems, presenting significant counterintelligence and security risks to the United States Government. Foreign governments and persons have also used commercial spyware for improper purposes, such as to target and intimidate perceived opponents; curb dissent; limit freedoms of expression, peaceful assembly, or association; enable other human rights abuses or suppression of civil liberties; and track or target United States persons without proper legal authorization, safeguards, or oversight.

The United States has a fundamental national security and foreign policy interest in countering and preventing the proliferation of commercial spyware that has been or risks being misused for such purposes, in light of the core interests of the United States in protecting United States Government personnel and United States citizens around the world; upholding and advancing democracy; promoting respect for human rights; and defending activists, dissidents, and journalists against threats to their freedom and dignity. To advance these interests and promote responsible use of commercial spyware, the United States must establish robust protections and procedures to ensure that any United States Government use of commercial spyware helps protect its information systems and intelligence and law enforcement activities against significant counterintelligence or security risks; aligns with its core interests in promoting democracy and democratic values around the world; and ensures that the United States Government does not contribute, directly or indirectly, to the proliferation of commercial spyware that has been misused by foreign governments or facilitate such misuse.

Therefore, I hereby establish as the policy of the United States Government that it shall not make operational use of commercial spyware that poses significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign person. In furtherance of the national security and foreign policy interests

of the United States, this order accordingly directs steps to implement that policy and protect the safety and security of United States Government institutions, personnel, information, and information systems; discourage the improper use of commercial spyware; and encourage the development and implementation of responsible norms regarding the use of commercial spyware that are consistent with respect for the rule of law, human rights, and democratic norms and values. The actions directed in this order are consistent with the policy objectives set forth in section 6318 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (NDAA FY 2023) (Public Law 117–263) and section 5502 of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022) (Public Law 117–81).

Sec. 2. *Prohibition on Operational Use.* (a) Executive departments and agencies (agencies) shall not make operational use of commercial spyware where they determine, based on credible information, that such use poses significant counterintelligence or security risks to the United States Government or that the commercial spyware poses significant risks of improper use by a foreign government or foreign person. For the purposes of this use prohibition:

(i) Commercial spyware may pose counterintelligence or security risks to the United States Government when:

(A) a foreign government or foreign person has used or acquired the commercial spyware to gain or attempt to gain access to United States Government computers or the computers of United States Government personnel without authorization from the United States Government; or

(B) the commercial spyware was or is furnished by an entity that:

(1) maintains, transfers, or uses data obtained from the commercial spyware without authorization from the licensed end-user or the United States Government;

(2) has disclosed or intends to disclose non-public United States Government information or non-public information about the activities of the United States Government without authorization from the United States Government; or

(3) is under the direct or effective control of a foreign government or foreign person engaged in intelligence activities, including surveillance or espionage, directed against the United States.

(ii) Commercial spyware may pose risks of improper use by a foreign government or foreign person when:

(A) the commercial spyware, or other commercial spyware furnished by the same vendor, has been used by a foreign government or foreign person for any of the following purposes:

(1) to collect information on activists, academics, journalists, dissidents, political figures, or members of non-governmental organizations or marginalized communities in order to intimidate such persons; curb dissent or political opposition; otherwise limit freedoms of expression, peaceful assembly, or association; or enable other forms of human rights abuses or suppression of civil liberties; or

(2) to monitor a United States person, without such person's consent, in order to facilitate the tracking or targeting of the person without proper legal authorization, safeguards, and oversight; or

(B) the commercial spyware was furnished by an entity that provides commercial spyware to governments for which there are credible reports in the annual country reports on human rights practices of the Department of State that they engage in systematic acts of political repression, including arbitrary arrest or detention, torture, extrajudicial or politically motivated killing, or other gross violations of human rights, consistent with any findings by the Department of State pursuant to section 5502 of the NDAA FY 2022 or other similar findings.

(iii) In determining whether the operational use of commercial spyware poses significant counterintelligence or security risks to the United States

Government or poses significant risks of improper use by a foreign government or foreign person, such that operational use should be prohibited, agencies shall consider, among other relevant considerations, whether the entity furnishing the commercial spyware knew or reasonably should have known that the spyware posed risks described in subsections (a)(i) or (ii) of this section, and whether the entity has taken appropriate measures to remove such risks, such as canceling relevant licensing agreements or contracts that present such risks; taking other verifiable action to prevent continuing uses that present such risks; or cooperating in United States Government efforts to counter improper use of the spyware.

(b) An agency shall not request or directly enable a third party to make operational use of commercial spyware where the agency has determined that such use poses significant counterintelligence or security risks to the United States Government or that the commercial spyware poses significant risks of improper use by a foreign government or foreign person, as described in subsection (a) of this section. For purposes of this order, the term “operational use” includes such indirect use.

(c) To facilitate effective interagency coordination of information relevant to the factors set forth in subsection (a) of this section and to promote consistency of application of this order across the United States Government, the Director of National Intelligence (DNI) shall, within 90 days of the date of this order, and on a semiannual basis thereafter, issue a classified intelligence assessment that integrates relevant information—including intelligence, open source, financial, sanctions-related, and export controls-related information—on foreign commercial spyware or foreign government or foreign person use of commercial spyware relevant to the factors set forth in subsection (a) of this section. The intelligence assessment shall incorporate, but not be limited to, the report and assessment required by section 1102A(b) of the National Security Act of 1947, 50 U.S.C. 3001 *et seq.*, as amended by section 6318(c) of the NDAA FY 2023. In order to facilitate the production of the intelligence assessment, the head of each agency shall, on an ongoing basis, provide the DNI all new credible information obtained by the agency on foreign commercial spyware vendors or foreign government or foreign person use of commercial spyware relevant to the factors set forth in subsection (a) of this section. Such information shall include intelligence, open source, financial, sanctions-related, export controls-related, and due diligence information, as well as information relevant to the development of the list of covered contractors developed or maintained pursuant to section 5502 of the NDAA FY 2022 or other similar information.

(d) Any agency that makes a determination of whether operational use of a commercial spyware product is prohibited under subsection (a) of this section shall provide the results of that determination and key elements of the underlying analysis to the DNI. After consulting with the submitting agency to protect operational sensitivities, the DNI shall incorporate this information into the intelligence assessment described in subsection (c) of this section and, as needed, shall make this information available to other agencies consistent with section 3(b) of this order.

(e) The Assistant to the President for National Security Affairs (APNSA), or a designee, shall, within 30 days of the issuance of the intelligence assessment described in subsection (c) of this section, and additionally as the APNSA or designee deems necessary, convene agencies to discuss the intelligence assessment, as well as any other information about commercial spyware relevant to the factors set forth in subsection (a) of this section, in order to ensure effective interagency awareness and sharing of such information.

(f) For any commercial spyware intended by an agency for operational use, a relevant official, as provided in section 5(k) of this order, shall certify the determination that the commercial spyware does not pose significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign

person based on the factors set forth in subsection (a) of this section. The obligation to certify such a determination shall not be delegated, except as provided in section 5(k) of this order.

(g) If an agency decides to make operational use of commercial spyware, the head of the agency shall notify the APNSA of such decision, describing the due diligence completed before the decision was made, providing relevant information on the agency's consideration of the factors set forth in subsection (a) of this section, and providing the reasons for the agency's determination. The agency may not make operational use of the commercial spyware until at least 7 days after providing this information or until the APNSA has notified the agency that no further process is required.

(h) Within 90 days of the issuance of the intelligence assessment described in subsection (c) of this section, each agency shall review all existing operational uses of commercial spyware and discontinue, as soon as the head of the agency determines is reasonably possible without compromising ongoing operations, operational use of any commercial spyware that the agency determines poses significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign person, pursuant to subsection (a) of this section.

(i) Within 180 days of the date of this order, each agency that may make operational use of commercial spyware shall develop appropriate internal controls and oversight procedures for conducting determinations under subsection (a) of this section, as appropriate and consistent with applicable law.

(j) At any time after procuring commercial spyware for operational use, if the agency obtains relevant information with respect to the factors set forth in subsection (a) of this section, the agency shall determine whether the commercial spyware poses significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign person, and, if so, shall terminate such operational use as soon as the head of the agency determines is reasonably possible without compromising ongoing operations, and shall notify the DNI and the APNSA.

(k) The Federal Acquisition Security Council shall consider the intelligence assessment described in subsection (c) of this section in evaluating whether commercial spyware poses a supply chain risk, as appropriate and consistent with applicable law, including 41 CFR Part 201-1 and 41 U.S.C. 1323.

(l) The prohibitions contained in this section shall not apply to the use of commercial spyware for purposes of testing, research, analysis, cybersecurity, or the development of countermeasures for counterintelligence or security risks, or for purposes of a criminal investigation arising out of the criminal sale or use of the spyware.

(m) A relevant official, as provided in section 5(k) of this order, may issue a waiver, for a period not to exceed 1 year, of an operational use prohibition determined pursuant to subsection (a) of this section if the relevant official determines that such waiver is necessary due to extraordinary circumstances and that no feasible alternative is available to address such circumstances. This authority shall not be delegated, except as provided in section 5(k) of this order. A relevant official may, at any time, revoke any waiver previously granted. Within 72 hours of making a determination to issue or revoke a waiver pursuant to this subsection, the relevant official who has issued or revoked the waiver shall notify the President, through the APNSA, of this determination, including the justification for the determination. The relevant official shall provide this information concurrently to the DNI.

Sec. 3. *Application to Procurement.* An agency seeking to procure commercial spyware for any purpose other than for a criminal investigation arising out of the criminal sale or use of the spyware shall, prior to making such

procurement and consistent with its existing statutory and regulatory authorities:

(a) review the intelligence assessment issued by the DNI pursuant to section 2(c) of this order;

(b) request from the DNI any additional information regarding the commercial spyware that is relevant to the factors set forth in section 2(a) of this order;

(c) consider the factors set forth in section 2(a) of this order in light of the information provided by the DNI; and

(d) consider whether any entity furnishing the commercial spyware being considered for procurement has implemented reasonable due diligence procedures and standards—such as the industry-wide norms reflected in relevant Department of State guidance on business and human rights and on transactions linked to foreign government end-users for products or services with surveillance capabilities—and controls that would enable the entity to identify and prevent uses of the commercial spyware that pose significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign person.

Sec. 4. Reporting Requirements. (a) The head of each agency that has procured commercial spyware, upon completing the review described in section 2(h) of this order, shall submit to the APNSA a report describing the review's findings. If the review identifies any existing operational use of commercial spyware, as defined in this order, the agency report shall include:

(i) a description of such existing operational use;

(ii) a determination of whether the commercial spyware poses significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign person, along with key elements of the underlying analysis, pursuant to section 2(a) of this order; and

(iii) in the event the agency determines that the commercial spyware poses significant risks pursuant to section 2(a) of this order, what steps have been taken to terminate its operational use.

(b) Within 45 days of an agency's procurement of any commercial spyware for any use described in section 2(l) of this order except for use in a criminal investigation arising out of the criminal sale or use of the spyware, the head of the agency shall notify the APNSA of such procurement and shall include in the notification a description of the purpose and authorized uses of the commercial spyware.

(c) Within 6 months of the date of this order, the head of each agency that has made operational use of commercial spyware or has procured commercial spyware for operational use shall submit to the APNSA a report on the actions that the agency has taken to implement this order, including the internal controls and oversight procedures the agency has developed pursuant to section 2(i) of this order.

(d) Within 1 year of the date of this order, and on an annual basis thereafter, the head of each agency that has procured commercial spyware for operational use shall provide the APNSA a report that identifies:

(i) any existing operational use of commercial spyware and the reasons why it does not pose significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign person, pursuant to section 2(a) of this order;

(ii) any operational use of commercial spyware that was terminated during the preceding year because it was determined to pose significant risks pursuant to section 2(a) of this order, the circumstances under which this determination was made, and the steps taken to terminate such use; and

(iii) any purchases made of commercial spyware, and whether they were made for operational use, during the preceding year.

Sec. 5. Definitions. For purposes of this order:

(a) The term “agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) The term “commercial spyware” means any end-to-end software suite that is furnished for commercial purposes, either directly or indirectly through a third party or subsidiary, that provides the user of the software suite the capability to gain remote access to a computer, without the consent of the user, administrator, or owner of the computer, in order to:

(i) access, collect, exploit, extract, intercept, retrieve, or transmit content, including information stored on or transmitted through a computer connected to the Internet;

(ii) record the computer’s audio calls or video calls or use the computer to record audio or video; or

(iii) track the location of the computer.

(c) The term “computer” shall have the same meaning as it has in 18 U.S.C. 1030(e)(1).

(d) The term “entity” means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

(e) The term “foreign entity” means an entity that is not a United States entity.

(f) The term “foreign government” means any national, state, provincial, or other governing authority, any political party, or any official of any governing authority or political party, in each case of a country other than the United States.

(g) The term “foreign person” means a person that is not a United States person.

(h) The term “furnish,” when used in connection with commercial spyware, means to develop, maintain, own, operate, manufacture, market, sell, resell, broker, lease, license, repackage, rebrand, or otherwise make available commercial spyware.

(i) The term “operational use” means use to gain remote access to a computer, without the consent of the user, administrator, or owner of the computer, in order to:

(i) access, collect, exploit, extract, intercept, retrieve, or transmit the computer’s content, including information stored on or transmitted through a computer connected to the Internet;

(ii) record the computer’s audio calls or video calls or use the computer to otherwise record audio or video; or

(iii) track the location of the computer.

The term “operational use” does not include those uses described in section 2(l) of this order.

(j) The term “person” means an individual or entity.

(k) The term “relevant official,” for purposes of sections 2(f) and 2(m) of this order, refers to any of the following: the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the DNI, the Director of the Central Intelligence Agency, or the Director of the National Security Agency. The Attorney General’s obligation under section 2(f) of this order and authority under section 2(m) of this order may be delegated only to the Deputy Attorney General.

(l) The term “remote access,” when used in connection with commercial spyware, means access to a computer, the computer’s content, or the computer’s components by using an external network (e.g., the Internet) when

the computer is not in the physical possession of the actor seeking access to that computer.

(m) The term “United States entity” means any entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches).

(n) The term “United States person” shall have the same meaning as it has in Executive Order 12333 of December 4, 1981 (United States Intelligence Activities), as amended.

(o) The term “United States Government personnel” means all United States Government employees as defined by 5 U.S.C. 2105.

Sec. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

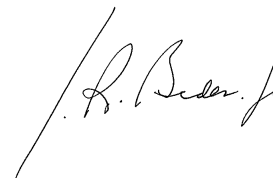
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

(b) Nothing in this order shall be construed to limit the use of any remedies available to the head of an agency or any other official of the United States Government.

(c) This order shall be implemented consistent with applicable law, including section 6318 of the NDAA FY 2023, as well as applicable procurement laws, and subject to the availability of appropriations.

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



THE WHITE HOUSE,
March 27, 2023.

Rules and Regulations

Federal Register

Vol. 88, No. 61

Thursday, March 30, 2023

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 ENERGY

10 CFR Part 431

[EERE-2018-BT-STD-0003]

RIN 1904-AE42

Energy Conservation Program: Energy Conservation Standards for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps

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

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including small, large, and very large commercial package air conditioning and heating equipment, of which variable refrigerant flow (VRF) multi-split air conditioners and VRF multi-split system heat pumps (collectively referred to as “VRF multi-split systems”) are a category. EPCA requires the U.S. Department of Energy (DOE or the Department) to consider the need for amended standards each time American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 90.1 is amended with respect to the standard levels or design requirements applicable to that equipment, or periodically under a six-year-lookback review provision. In this final rule, DOE is adopting amended energy conservation standards for VRF multi-split systems that rely on a new cooling efficiency metric and are equivalent to those levels specified in ASHRAE Standard 90.1. DOE has determined that it lacks the clear and convincing evidence required by the statute to adopt standards more stringent than the levels specified in the industry standard.

DATES:

Effective date: The effective date of this rule is May 30, 2023.

Compliance date: Compliance with the amended standards established for VRF multi-split systems in this final rule is required on and after January 1, 2024.

ADDRESSES: The docket for this rulemaking, 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 information that is exempt from public disclosure.

The docket web page can be found at www.regulations.gov/docket/EERE-2018-BT-STD-0003. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-7335. Email:

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Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-5827. Email: Eric.Stas@hq.doe.gov.

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

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I. Synopsis of the Final Rule

The Energy Policy and Conservation Act, Public Law 94-163, (42 U.S.C. 6291-6317, as codified) as amended (EPCA),¹ authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C² of EPCA established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311-6317) Such equipment includes small, large, and very large commercial package air conditioning and heating equipment, of which VRF multi-split systems, the subject of this rulemaking, are a category. (42 U.S.C. 6311(1)(B)-(D))

Pursuant to EPCA, DOE is triggered to consider amending the energy conservation standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever the

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

² For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A-1.

ASHRAE amends the standard levels or design requirements prescribed in ASHRAE Standard 90.1, “Energy Standard for Buildings Except Low-Rise Residential Buildings.” Under a separate provision of EPCA, DOE is required to review the existing energy conservation standards for those types of covered equipment subject to ASHRAE Standard 90.1 every six years to determine whether those standards need to be amended. (42 U.S.C. 6313(a)(6)(A)–(C))

More specifically, under the “ASHRAE trigger” provision, EPCA directs that for each type of covered equipment, if ASHRAE Standard 90.1 is amended, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent efficiency level would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE adopts as a uniform national standard the efficiency level specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) If DOE determines that a more-stringent standard is appropriate under the statutory criteria, DOE must establish such more-stringent standard not later than 30 months after publication of the revised ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B)(i))

Under EPCA, DOE must also review its energy conservation standards for VRF multi-split systems every six years and either: (1) issue a notice of determination that the standards do not need to be amended, as adoption of a more-stringent level under the relevant statutory criteria is not supported by clear and convincing evidence; or (2) issue a notice of proposed rulemaking including new proposed standards based on certain criteria and procedures in subparagraph (B).³ (42 U.S.C. 6313(a)(6)(C)(i))

³ In relevant part, subparagraph (B) specifies that: (1) in making a determination of economic justification, DOE must consider, to the maximum extent practicable, the benefits and burdens of an amended standard based on the seven criteria described in EPCA; (2) DOE may not prescribe any standard that increases the energy use or decreases the energy efficiency of a covered equipment; and (3) DOE may not prescribe an amended standard that interested persons have established by a preponderance of evidence is likely to result in the unavailability in the United States of any product type (or class) of performance characteristics (including reliability, features, sizes, capacities, and volumes) that are substantially the same as those

ASHRAE officially released ASHRAE Standard 90.1–2016 on October 26, 2016, thereby triggering DOE’s previously referenced obligations pursuant to EPCA to determine for certain classes of VRF multi-split systems, whether: (1) the amended industry standard should be adopted; or (2) clear and convincing evidence exists to justify more-stringent standard levels. For any class where DOE was not triggered, the Department routinely considers those classes under the statute’s six-year-lookback review provision at the same time, so as to address the subject equipment in a comprehensive fashion.

The current Federal energy conservation standards for air-cooled VRF multi-split systems with cooling capacity greater than or equal to 65,000 Btu/h and water-source VRF multi-split heat pumps (denominated in terms of EER and COP) are codified in DOE’s regulations at 10 CFR 431.97. These standards are specified in terms of Energy Efficiency Ratio (EER) for cooling mode and Coefficient of Performance (COP) for heating mode based on the Federal test procedure at 10 CFR 431.96, which points to applicable appendix D which in turn references American National Standards Institute (ANSI)/Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 1230–2010, “*2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment*,” approved August 2, 2010 and updated by Addendum 1 in March 2011 (ANSI/AHRI 1230–2010).

The current Federal energy conservation standards for air-cooled, three-phase VRF multi-split systems with cooling capacity less than 65,000 Btu/h are also codified in 10 CFR 431.97. These standards are specified in terms of Seasonal Energy Efficiency Ratio (SEER) for cooling mode and Heating Seasonal Performance Factor (HSPF) for heating mode based on the rating conditions in ANSI/AHRI 1230–2010. Although the current standards levels are based on the same test procedure as used for all other categories of VRF systems (*i.e.*, air-cooled VRF multi-split systems with cooling capacity greater than or equal to 65,000 Btu/h and water-source VRF multi-split systems), the organizations that maintain the industry consensus test procedures have recently updated their scope such that air-cooled, three-phase VRF multi-split systems with cooling capacity less than 65,000 Btu/h

generally available in the United States. (42 U.S.C. 6313(a)(6)(B)(ii)–(iii))

are now covered under AHRI 210/240–2023 instead of AHRI 1230–2021. Consequently, DOE addressed test procedures for air-cooled, three-phase VRF multi-split systems with cooling capacity less than 65,000 Btu/h in a separate test procedure rulemaking for air-cooled, three-phase, small commercial package air conditioning and heating equipment with cooling capacity less than 65,000 Btu/h (*see* 87 FR 77298 (Dec. 16, 2022)) instead of in the test procedure rulemaking for VRF multi-split systems (*see* 87 FR 63860 (Oct. 20, 2022)). Accordingly, DOE is not evaluating the Federal energy conservation standards for such equipment in this document and is instead addressing energy conservation standards for air-cooled, three-phase VRF multi-split systems with cooling capacity less than 65,000 Btu/h in a separate energy conservation standards rulemaking for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h (*see* 87 FR 18290 (March 30, 2022)).

The efficiency levels set forth in ASHRAE Standard 90.1–2016 for VRF multi-split systems with cooling capacity 65,000 Btu/h or greater are specified in terms of both EER and Integrated Energy Efficiency Ratio (IEER) for cooling mode and COP for heating mode. These efficiency levels are based on the rating conditions of ANSI/AHRI Standard 1230–2014 with addendum 1 (ANSI/AHRI 1230–2014), which are identical rating conditions to those found in AHRI 1230–2010. The EER levels found in ASHRAE 90.1–2016 are unchanged from the current Federal EER requirements; however, for certain classes of water-source VRF multi-split heat pumps, the COP levels specified in ASHRAE Standard 90.1–2016 are more stringent. See additional discussion in section II.B.2 of this document.

On April 11, 2018, DOE published in the **Federal Register** a Notice of Intent to establish a negotiated rulemaking working group (Working Group) under the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) to negotiate a proposed test procedure and amended energy conservation standards for VRF multi-split systems. 83 FR 15514. The Working Group reached consensus on an energy conservation standards term sheet (VRF ECS Term Sheet) on November 5, 2019, outlining recommended amended energy conservation standards for all equipment classes of VRF multi-split systems. The standard levels recommended by the Working Group in

the VRF ECS Term Sheet⁴ are in terms of the IEER and COP metrics and equivalent to the levels specified in ASHRAE Standard 90.1–2022.⁵ The levels recommended by the working group are measured according to the most recent industry test standard for VRF multi-split systems⁶—AHRI Standard 1230, “2021 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment” (AHRI 1230–2021), which is referenced in ASHRAE Standard 90.1–2022. See additional discussion in section II.B.3 of this final rule.

As described in detail in section III.B of this document, DOE conducted a crosswalk analysis during the ASRAC negotiation meetings to validate the translation of the EER levels currently required by the DOE standards to IEER, as well as the IEER efficiency levels as recommended by the Working Group. DOE notes that IEER is a more comprehensive metric because it reflects the energy efficiency across a range of operating conditions, as opposed to the efficiency at a single condition. The crosswalk translates the current Federal EER standards (measured per the current DOE test procedure) to IEER levels of equivalent stringency (measured per the September 20, 2019 draft version of the AHRI 1230 standard). As described in section II.B.3 of this document, the recommended 2019 draft test procedure was later published as AHRI 1230–2021, and no

substantive changes were made that impact crosswalk results. Differences in the metrics and test procedures cause the crosswalk analysis to yield a range of IEER values corresponding to a given EER value. DOE’s translation of the current EER levels to IEER according to the updated test procedure shows that each value recommended by the Working Group is within the range resulting from DOE’s evaluation. Given that the metric takes into account a wider breadth of energy consumption across a variety of operating conditions, DOE has determined that the recommended IEER values are at least equivalent in stringency to the current EER values. Further, given that IEER is a more comprehensive metric, DOE has concluded that the recommended IEER values would not decrease the minimum required energy efficiency of VRF basic models.

Because the updates in AHRI 1230–2021 do not affect the measurement of COP, no crosswalk was required to evaluate the stringency of the COP levels proposed in the VRF ECS Term Sheet as compared to the existing Federal COP levels.

In this final rule, DOE is adopting the energy conservation standard levels and the equipment class structure from ASHRAE Standard 90.1–2016 for air-cooled VRF multi-split systems with cooling capacity greater than or equal to 65,000 Btu/h and for all water-source VRF multi-split heat pumps. The amended standards, which are

expressed in terms of IEER and COP, are presented in Table I–1. These standards will apply to all VRF multi-split systems listed in Table I–1 manufactured in, or imported into, the United States starting on January 1, 2024. The amended standard levels are equivalent to the standard levels recommended by the Working Group in the VRF ECS Term Sheet. The amended equipment class structure differs from the existing DOE equipment class structure regarding capacity break points and designations based on heating type; however, DOE has concluded that none of the changes to the equipment class structure for VRF multi-split systems constitute backsliding.

DOE has determined that the potential energy savings associated with adopting the ASHRAE 90.1–2016 standard levels for the triggered classes are *de minimis*. Also, as described in section V of this document, DOE has determined that insufficient data are available to determine, based on clear and convincing evidence, that more-stringent standards would result in significant additional energy savings and be technologically, feasible and economically justified. As such, DOE has not conducted further analysis of more-stringent standard levels for this final rule. Consequently, DOE is adopting the levels specified in ASHRAE Standard 90.1–2016, as required by EPCA.

TABLE I–1—AMENDED ENERGY CONSERVATION STANDARDS FOR VRF MULTI-SPLIT SYSTEMS

Equipment type	Size category	Heating type	Minimum efficiency
VRF Multi-Split Air Conditioners (Air-Cooled)	≥65,000 and <135,000 Btu/h	All	15.5 IEER.
	≥135,000 and <240,000 Btu/h	All	14.9 IEER.
	≥240,000 Btu/h and <760,000 Btu/h	All	13.9 IEER.
VRF Multi-Split Heat Pumps (Air-Cooled)	≥65,000 and <135,000 Btu/h	Heat Pump without Heat Recovery	14.6 IEER, 3.3 COP.
		Heat Pump with Heat Recovery	14.4 IEER, 3.3 COP.
	≥135,000 and <240,000 Btu/h	Heat Pump without Heat Recovery	13.9 IEER, 3.2 COP.
		Heat Pump with Heat Recovery	13.7 IEER, 3.2 COP.
	≥240,000 Btu/h and <760,000 Btu/h	Heat Pump without Heat Recovery	12.7 IEER, 3.2 COP.
		Heat Pump with Heat Recovery	12.5 IEER, 3.2 COP.
VRF Multi-Split Heat Pumps (Water-Source)	<65,000 Btu/h	Heat Pump without Heat Recovery	16.0 IEER, 4.3 COP.
		Heat Pump with Heat Recovery	15.8 IEER, 4.3 COP.
	≥65,000 and <135,000 Btu/h	Heat Pump without Heat Recovery	16.0 IEER, 4.3 COP.
		Heat Pump with Heat Recovery	15.8 IEER, 4.3 COP.
	≥135,000 and <240,000 Btu/h	Heat Pump without Heat Recovery	14.0 IEER, 4.0 COP.
		Heat Pump with Heat Recovery	13.8 IEER, 4.0 COP.
	≥240,000 Btu/h and <760,000 Btu/h	Heat Pump without Heat Recovery	12.0 IEER, 3.9 COP.
		Heat Pump with Heat Recovery	11.8 IEER, 3.9 COP.

⁴ The VRF ECS Term Sheet can be accessed at www.regulations.gov/document/EERE-2018-BT-STD-0003-0055.

⁵ DOE notes that on October 24, 2019, ASHRAE officially released for distribution and made public ASHRAE Standard 90.1–2019. ASHRAE Standard 90.1–2019 maintained the equipment class structure for VRF multi-split systems from ASHRAE

Standard 90.1–2016 and did not update efficiency levels for any VRF equipment classes. In January 2023, ASHRAE published ASHRAE Standard 90.1–2022, which updates the test procedure reference for VRF multi-split systems to AHRI 1230–2021. ASHRAE Standard 90.1–2022 also maintains IEER standard levels equivalent to those specified in ASHRAE Standard 90.1–2019.

⁶ The VRF ASRAC Working Group recommended a 2019 draft version of AHRI 1230 with additional recommendations for further development of the test standard outside of the Working Group. The 2019 draft of AHRI 1230 was later released as AHRI 1230–2021, which included the Working Group’s recommendations.

II. Introduction

The following section briefly discusses the statutory authority underlying this final rule, as well as some of the relevant historical background related to the establishment of standards for VRF multi-split systems.

A. Authority

EPCA, Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA, added by Public Law 95–619, Title IV, section 441(a), (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This covered equipment includes small, large, and very large commercial package air conditioning and heating equipment, which includes the VRF multi-split systems that are the subject of this document. (42 U.S.C. 6311(1)(B)–(D)) Additionally, as discussed in further detail subsequently, the statute requires DOE to consider amending the energy conservation standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever ASHRAE amends the efficiency levels or design requirements prescribed in ASHRAE Standard 90.1, and even in the absence of an ASHRAE trigger event, a separate provision of EPCA requires DOE to consider amended standards for such equipment, at a minimum, every six years. (42 U.S.C. 6313(a)(6)(A)–(C))

Under EPCA, the energy conservation program, consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal

preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6297(d); 42 U.S.C. 6316(a); 42 U.S.C. 6316(b)(2)(D))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of covered equipment during a representative average use cycle and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) Manufacturers of covered equipment must use the Federal test procedures as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the energy use or efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with the relevant energy conservation standards promulgated under EPCA. The DOE test procedures for VRF multi-split systems appear at 10 CFR part 431, subpart F.

ASHRAE Standard 90.1 sets industry energy efficiency levels for small, large, and very large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks (collectively referred to as “ASHRAE equipment”). For each type of listed equipment, EPCA directs that if ASHRAE amends ASHRAE Standard 90.1 with respect to the standard levels or design requirements under that standard, DOE must adopt amended standards at the new ASHRAE efficiency level, unless DOE determines, supported by clear and convincing evidence,⁷ that adoption of a more-stringent level would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE makes such a determination, it must publish a

final rule to establish the more-stringent standards. (42 U.S.C. 6313(a)(6)(B)(i))

Although EPCA does not explicitly define the term “amended” in the context of what type of revision to ASHRAE Standard 90.1 would trigger DOE’s obligation, DOE’s longstanding interpretation has been that the statutory trigger is an amendment to the standard applicable to that equipment under ASHRAE Standard 90.1 that increases the energy efficiency level for that equipment. *See* 72 FR 10038, 10042 (March 7, 2007). If the revised ASHRAE Standard 90.1 leaves the energy efficiency level unchanged (or lowers the energy efficiency level), as compared to the energy efficiency level specified by the uniform national standard adopted pursuant to EPCA, regardless of the other amendments made to the ASHRAE Standard 90.1 requirement (*e.g.*, the inclusion of an additional metric), DOE has stated that it does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A), although this does not limit DOE’s authority to consider higher standards as part of a six-year-lookback rulemaking analysis (pursuant to 42 U.S.C. 6313(a)(6)(C); see discussion in the following paragraphs). *See* 74 FR 36312, 36313 (July 22, 2009) and 77 FR 28928, 28937 (May 16, 2012). If an amendment to ASHRAE Standard 90.1 changes the metric for the standard on which the Federal requirement was based, DOE would perform a crosswalk analysis to determine whether the amended metric under ASHRAE Standard 90.1 resulted in an energy efficiency level that was more stringent than the current DOE standard. Under EPCA, DOE must also review its energy conservation standards for VRF multi-split systems every six years and either: (1) issue a notice of determination that the standards do not need to be amended, as adoption of a more-stringent level is not supported by clear and convincing evidence; or (2) issue a notice of proposed rulemaking including new proposed standards based on certain criteria and procedures in subparagraph (B).⁸ (42 U.S.C. 6313(a)(6)(C))

⁷ The clear and convincing threshold is a heightened standard, and would only be met where the Secretary has an abiding conviction, based on available facts, data, and DOE’s own analyses, that it is highly probable an amended standard would result in a significant additional amount of energy savings, and is technologically feasible and economically justified. *American Public Gas Association v. U.S. Dep’t of Energy*, No. 20–1068, 2022 WL 151923, at *4 (D.C. Cir. January 18, 2022) (citing *Colorado v. New Mexico*, 467 U.S. 310, 316, 104 S.Ct. 2433, 81 L.Ed.2d 247 (1984)).

⁸ In relevant part, subparagraph (B) specifies that: (1) in making a determination of economic justification, DOE must consider, to the maximum extent practicable, the benefits and burdens of an amended standard based on the seven criteria described in EPCA; (2) DOE may not prescribe any standard that increases the energy use or decreases the energy efficiency of covered equipment; and (3) DOE may not prescribe an amended standard that interested persons have established by a preponderance of evidence is likely to result in the unavailability in the United States of any product type (or class) of performance characteristics

In deciding whether a more-stringent standard is economically justified, under either the provisions of 42 U.S.C. 6313(a)(6)(A) or 42 U.S.C. 6313(a)(6)(C), DOE must determine whether the benefits of the standard exceed its burdens. DOE must make this determination after receiving comments on the proposed standard, and by considering, to the maximum extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment that are likely to result from the standard;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered product likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary of Energy considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII))

EPCA, as codified, also contains what is known as an “anti-backsliding” provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa)).

B. Background

1. Current Standards

EPCA defines “commercial package air conditioning and heating equipment” as air-cooled, water-cooled,

evaporatively-cooled, or water-source (not including ground-water-source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application. (42 U.S.C. 6311(8)(A); 10 CFR 431.92) EPCA further classifies “commercial package air conditioning and heating equipment” into categories based on cooling capacity (*i.e.*, small, large, and very large categories). (42 U.S.C. 6311(8)(B)–(D); 10 CFR 431.92) “Small commercial package air conditioning and heating equipment” means equipment rated below 135,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(B); 10 CFR 431.92) “Large commercial package air conditioning and heating equipment” means equipment rated: (i) at or above 135,000 Btu per hour; and (ii) below 240,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(C); 10 CFR 431.92) “Very large commercial package air conditioning and heating equipment” means equipment rated: (i) at or above 240,000 Btu per hour; and (ii) below 760,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(D); 10 CFR 431.92)

Pursuant to its authority under EPCA (42 U.S.C. 6313(a)(6)(A)) and in response to updates to ASHRAE Standard 90.1, DOE has established the category of VRF multi-split systems, which meets the EPCA definition of “commercial package air conditioning and heating equipment,” but which EPCA did not expressly identify. *See* 10 CFR 431.92 and 10 CFR 431.97.

This final rule covers commercial and industrial equipment that meets the definition of “variable refrigerant flow systems,” included in the definition of “basic model” as codified at 10 CFR 431.92. More specifically, “variable refrigerant flow systems” means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.*, electric or gas), and which have the same or comparably performing compressor(s) that have a common “nominal” cooling capacity and the same heat rejection medium (*e.g.*, air or water) (includes VRF water-source heat pumps). *Id.*

A “variable refrigerant flow multi-split air conditioner” means a unit of commercial package air-conditioning and heating equipment that is configured as a split-system air conditioner incorporating a single refrigerant circuit, with one or more outdoor units, at least one variable-speed compressor or an alternate compressor combination for varying the capacity of the system by three or more steps, and multiple indoor fan coil

units, each of which is individually metered and individually controlled by an integral control device and common communications network and which can operate independently in response to multiple indoor thermostats. Variable refrigerant flow implies three or more steps of capacity control on common, inter-connecting piping. 10 CFR 431.92.

A “variable refrigerant flow multi-split heat pump” means a unit of commercial package air-conditioning and heating equipment that is configured as a split-system heat pump that uses reverse cycle refrigeration as its primary heating source and which may include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas. The equipment incorporates a single refrigerant circuit, with one or more outdoor units, at least one variable-speed compressor or an alternate compressor combination for varying the capacity of the system by three or more steps, and multiple indoor fan coil units, each of which is individually metered and individually controlled by a control device and common communications network and which can operate independently in response to multiple indoor thermostats. Variable refrigerant flow implies three or more steps of capacity control on common, inter-connecting piping. 10 CFR 431.92.

DOE adopted energy conservation standards for VRF multi-split systems in a final rule published in the **Federal Register** on May 16, 2012 (May 2012 Final Rule). 77 FR 28928, 28995. DOE’s initial standards for VRF multi-split systems were prompted by ASHRAE’s decision to include minimum efficiency levels for VRF multi-split systems for the first time in the 2010 edition of ASHRAE Standard 90.1 (ASHRAE Standard 90.1–2010). For four of the VRF water-source heat pump classes (including VRF water-source heat pumps with cooling capacity less than 17,000 Btu/h and VRF water-source heat pumps with cooling capacity greater than or equal to 135,000 Btu/h and less than 760,000 Btu/h), DOE adopted the standard levels in ASHRAE Standard 90.1–2010, having determined that the updates to ASHRAE Standard 90.1–2010 either raised the energy efficiency levels above the existing Federal energy conservation standards or set standards for equipment for which DOE did not previously have standards. 77 FR 28928, 28938 (May 16, 2012). For all other equipment classes of VRF multi-split systems, DOE maintained the standards from the equipment class under which the corresponding VRF multi-split system equipment class was previously regulated (*i.e.*, air-cooled VRF multi-

(including reliability, features, sizes, capacities, and volumes) that are substantially the same as those generally available in the United States. (42 U.S.C. 6313(a)(6)(B)(ii)–(iii))

split systems had previously been covered as small, large, and very large air-cooled central air-conditioning heat pumps with electric resistance heating, while water-source VRF multi-split heat pumps had previously been covered as water-source heat pumps).

For the equipment addressed in this final rule, DOE's current equipment classes for VRF multi-split systems are differentiated by refrigeration cycle (air conditioners or heat pumps), condenser heat rejection medium (air-cooled or water-source), cooling capacity, and heating type (for air-cooled: "No heating

or electric resistance heating" or "all other types of heating"; for water-source: "without heat recovery," "with heat recovery," or "all"). DOE's current standards for VRF multi-split systems are set forth at Table 13 to 10 CFR 431.97 and repeated in Table II–1 of this document.

TABLE II–1—CURRENT FEDERAL ENERGY EFFICIENCY STANDARDS FOR VRF MULTI-SPLIT SYSTEMS

Equipment type	Cooling capacity	Heating type ¹	Efficiency level	Compliance date: equipment manufactured on and after . . .
VRF Multi-Split Air Conditioners (Air-Cooled).	<65,000 Btu/h	All	13.0 SEER	June 16, 2008.
		No Heating or Electric Resistance Heating.	11.2 EER	January 1, 2010.
	≥65,000 Btu/h and <135,000 Btu/h	All Other Types of Heating	11.0 EER	January 1, 2010.
		No Heating or Electric Resistance Heating.	11.0 EER	January 1, 2010.
	≥135,000 Btu/h and <240,000 Btu/h	All Other Types of Heating	10.8 EER	January 1, 2010.
		No Heating or Electric Resistance Heating.	10.0 EER	January 1, 2010.
VRF Multi-Split Heat Pumps (Air-Cooled).	<65,000 Btu/h	All Other Types of Heating	9.8 EER	January 1, 2010.
		All	13.0 SEER, 7.7 HSPF	June 16, 2008.
	≥65,000 Btu/h and <135,000 Btu/h	No Heating or Electric Resistance Heating.	11.0 EER, 3.3 COP	January 1, 2010.
		All Other Types of Heating	10.8 EER, 3.3 COP	January 1, 2010.
	≥135,000 Btu/h and <240,000 Btu/h	No Heating or Electric Resistance Heating.	10.6 EER, 3.2 COP	January 1, 2010.
		All Other Types of Heating	10.4 EER, 3.2 COP	January 1, 2010.
VRF Multi-Split Heat Pumps (Water-Source).	<17,000 Btu/h	No Heating or Electric Resistance Heating.	9.5 EER, 3.2 COP	January 1, 2010.
		All Other Types of Heating	9.3 EER, 3.2 COP	January 1, 2010.
	≥17,000 Btu/h and <65,000 Btu/h	Without heat recovery	12.0 EER, 4.2 COP	October 29, 2012.
		With heat recovery	11.8 EER, 4.2 COP	October 29, 2003.
	≥65,000 Btu/h and <135,000 Btu/h	All	12.0 EER, 4.2 COP	October 29, 2012.
		All	12.0 EER, 4.2 COP	October 29, 2003.
VRF Multi-Split Heat Pumps (Water-Source).	≥135,000 Btu/h and <760,000 Btu/h	Without heat recovery	10.0 EER, 3.9 COP	October 29, 2013.
		With heat recovery	9.8 EER, 3.9 COP	October 29, 2013.

¹ VRF Multi-Split Heat Pumps (Air-Cooled) with heat recovery fall under the category of "All Other Types of Heating" unless they also have electric resistance heating, in which case they fall under the category for "No Heating of Electric Resistance Heating."

2. ASHRAE Standard 90.1–2016

ASHRAE released the 2016 version of ASHRAE Standard 90.1 (ASHRAE Standard 90.1–2016) on October 26, 2016, which increased the heating mode efficiency level (in terms of COP) for six of the current DOE VRF multi-split system equipment classes:

- (1) VRF Multi-Split Heat Pumps, Water-source <17,000 Btu/h, Without Heat Recovery;
- (2) VRF Multi-Split Heat Pumps, Water-source <17,000 Btu/h, With Heat Recovery;
- (3) VRF Multi-Split Heat Pumps, Water-source ≥17,000 Btu/h and <65,000 Btu/h;
- (4) VRF Multi-Split Heat Pumps, Water-source ≥65,000 Btu/h and <135,000 Btu/h;
- (5) VRF Multi-Split Heat Pumps, Water-source ≥135,000 Btu/h and <760,000 Btu/h, Without Heat Recovery; and
- (6) VRF Multi-Split Heat Pumps, Water-source ≥135,000 Btu/h and <760,000 Btu/h, With Heat Recovery.

ASHRAE Standard 90.1–2016 left the heating mode efficiency level for the remaining six DOE equipment classes of VRF multi-split heat pump systems with cooling capacity greater than or equal to 65,000 Btu/h and the cooling mode efficiency levels in terms of EER for all DOE equipment classes unchanged. (DOE notes that standards for 3-phase air-cooled VRF heat pumps <65,000 Btu/h are being considered in a separate energy conservation standards rulemaking (see Docket EERE–2022–BT–STD–0008).

DOE published a notice of data availability and request for information (NODA/RFI) in response to the amendments to ASHRAE Standard 90.1–2016 in the **Federal Register** on July 8, 2019 (July 2019 NODA/RFI). 84 FR 32328. In the July 2019 NODA/RFI, DOE compared the current Federal standards for VRF multi-split systems (in terms of EER and COP) to the levels in ASHRAE Standard 90.1–2016 and requested comment on its preliminary findings. 84 FR 32328, 32333–32334 (July 8, 2019). In addition to evaluating

amended energy conservation standards for the six equipment classes triggered by the updated levels in ASHRAE Standard 90.1–2016, DOE also examined the other 14 equipment classes of VRF multi-split systems under its six-year-lookback authority (42 U.S.C. 6313(a)(6)(C)) and solicited data from stakeholders. 84 FR 32328, 32334 (July 8, 2019).

On October 24, 2019, ASHRAE officially released for distribution and made public ASHRAE Standard 90.1–2019. ASHRAE Standard 90.1–2019 maintained the equipment class structure for VRF multi-split systems from ASHRAE Standard 90.1–2016 and did not update efficiency levels for any VRF equipment classes.

Subsequently, in January 2023, ASHRAE published ASHRAE Standard 90.1–2022. Once again, ASHRAE Standard 90.1–2022 maintained the equipment class structure for VRF multi-split systems from ASHRAE Standard 90.1–2016 and maintained the IEER efficiency levels for all VRF equipment classes.

3. ASRAC Negotiations

On April 11, 2018, DOE published in the **Federal Register** a notice of its intent to establish a negotiated rulemaking working group (Working Group) under the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC), in accordance with the Federal Advisory Committee Act⁹ and the Negotiated Rulemaking Act,¹⁰ to negotiate an amended test procedure and amended energy conservation standards for VRF multi-split systems. 83 FR 15514. The purpose of the Working Group was to discuss and, if possible, reach consensus on a proposed rule regarding the test procedure and energy conservation standards for VRF multi-split systems, as authorized by EPCA. *Id.* The Working Group comprised 21 voting members including manufacturers, energy efficiency advocates, utilities, and trade organizations.¹¹

On October 1, 2019, the Working Group reached consensus on a test procedure term sheet (VRF TP Term Sheet; Docket No. EERE–2018–BT–STD–0003–0044) that includes several

recommendations. The following list includes the most substantial recommendations:

(1) VRF multi-split systems should be rated with the Integrated Energy Efficiency Ratio (IEER) metric to allow consumers to make consistent comparisons with other equipment using the IEER metric (*e.g.*, rooftop air conditioner ratings).

(2) Use of the amended test procedure should not be required until the compliance date of amended energy conservation standards.

(3) The Federal test procedure for VRF multi-split systems should be consistent with the September 20, 2019 draft version of AHRI 1230, with additional recommended amendments to be implemented after the conclusion of ASRAC negotiations.

Following completion of the VRF TP Term Sheet, the Working Group proceeded to negotiate recommended revised energy conservation standards for VRF multi-split systems that accounted for the translation from the EER metric to the IEER metric, as well as the changes between the Federal test procedure that references AHRI 1230–

2010 and the recommended 2019 draft test procedure AHRI 1230 (which was later published as AHRI 1230–2021). As described in greater detail in section III.B of this document, DOE conducted a crosswalk analysis to inform the development of standard levels for VRF multi-split systems in terms of the new test procedure and metric. DOE presented the results of its crosswalk analysis on November 5, 2019 (Docket No. EERE–2018–BT–STD–0003–0061 at p. 45), and subsequently, the Working Group reached consensus on an energy conservation standards term sheet (VRF ECS Term Sheet; Docket No. EERE–2018–BT–STD–0003–0055) recommending:

(1) Amendments to the Federal minimum efficiency standards for VRF multi-split systems (as presented in Table II–2 of this final rule) per the test procedure recommended in the VRF TP Term Sheet.

(2) The compliance date of the recommended energy conservation standards should be January 1, 2024 for all VRF multi-split system equipment classes included in this rulemaking.

TABLE II–2—RECOMMENDED EFFICIENCY LEVELS FROM VRF ECS TERM SHEET

Equipment class	Energy efficiency levels recommended ¹
VRF Air Conditioners, Air-cooled, ≥65,000 Btu/h and <135,000 Btu/h	15.5 IEER.
VRF Air Conditioners, Air-cooled, ≥135,000 Btu/h and <240,000 Btu/h	14.9 IEER.
VRF Air Conditioners, Air-cooled, ≥240,000 Btu/h and <760,000 Btu/h	13.9 IEER.
VRF Heat Pumps, Air-cooled, ≥65,000 Btu/h and <135,000 Btu/h, No Heating or Electric Resistance Heating	14.6 IEER, 3.3 COP.
VRF Heat Pumps, Air-cooled, ≥65,000 Btu/h and <135,000 Btu/h, All Other Types of Heating	14.4 IEER, 3.3 COP.
VRF Heat Pumps, Air-cooled, ≥135,000 Btu/h and <240,000 Btu/h, No Heating or Electric Resistance Heating	13.9 IEER, 3.2 COP.
VRF Heat Pumps, Air-cooled, ≥135,000 Btu/h and <240,000 Btu/h, All Other Types of Heating	13.7 IEER; 3.2 COP.
VRF Heat Pumps, Air-cooled, ≥240,000 Btu/h and <760,000 Btu/h, No Heating or Electric Resistance Heating	12.7 IEER, 3.2 COP.
VRF Heat Pumps, Air-cooled, ≥240,000 Btu/h and <760,000 Btu/h, All Other Types of Heating	12.5 IEER; 3.2 COP.
VRF Heat Pumps, Water-source, <17,000 Btu/h, Without Heat Recovery	16.0 IEER, 4.3 COP.
VRF Heat Pumps, Water-source, <17,000 Btu/h, With Heat Recovery	15.8 IEER, 4.3 COP.
VRF Heat Pumps, Water-source, ≥17,000 Btu/h and <65,000 Btu/h, Without Heat Recovery	16.0 IEER, 4.3 COP.
VRF Heat Pumps, Water-source, ≥17,000 Btu/h and <65,000 Btu/h, With Heat Recovery	15.8 IEER, 4.3 COP.
VRF Heat Pumps, Water-source, ≥65,000 Btu/h and <135,000 Btu/h, Without Heat Recovery	16.0 IEER, 4.3 COP.
VRF Heat Pumps, Water-source, ≥65,000 Btu/h and <135,000 Btu/h, With Heat Recovery	15.8 IEER, 4.3 COP.
VRF Heat Pumps, Water-source, ≥135,000 Btu/h and <240,000 Btu/h, Without Heat Recovery	14.0 IEER, 4.0 COP.
VRF Heat Pumps, Water-source, ≥135,000 Btu/h and <240,000 Btu/h, With Heat Recovery	13.8 IEER, 4.0 COP.
VRF Heat Pumps, Water-source, ≥240,000 Btu/h and <760,000 Btu/h, Without Heat Recovery	12.0 IEER, 3.9 COP.
VRF Heat Pumps, Water-source, ≥240,000 Btu/h and <760,000 Btu/h, With Heat Recovery	11.8 IEER, 3.9 COP.

¹ The VRF ECS Term Sheet includes the notation “COP_H” which indicates coefficient of performance in heating mode at 47 °F outdoor ambient temperature (for air-cooled VRF multi-split heat pumps) and at 68 °F entering water temperature (for water-source VRF multi-split heat pumps).

DOE notes that there are minor differences in equipment class structure (related to cooling capacity, supplementary heating type, and presence of heat recovery) between the VRF ECS Term Sheet, ASHRAE Standard 90.1–2019, and the current

Federal energy conservation standards for VRF multi-split systems. This topic is discussed in greater detail in section II.B.3 of this document.

On May 18, 2021, AHRI published an updated industry test standard for VRF multi-split systems, AHRI 1230–2021.

Subsequently, on December 10, 2021, DOE published in the **Federal Register** the VRF TP NOPR (December 2021 VRF TP NOPR), in which DOE proposed an amended test procedure for VRF multi-split systems that incorporates by reference AHRI 1230–2021 and

⁹ 5 U.S.C. App. 2, Public Law 92–463.

¹⁰ 5 U.S.C. 561–570, Public Law 101–648.

¹¹ A complete list of the ASRAC VRF Working Group members is available by clicking on the

“Working Group” tab at: www.energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee#Variable%20Refrigerant

[%20Flow%20Multi-Split%20Air%20Conditioners%20and%20Heat%20Pumps%20Working%20Group.](#)

proposed to adopt IEER as the test metric for VRF multi-split systems. 86 FR 70644, 70652. DOE finalized these proposals in a test procedure final rule published in the **Federal Register** on October 20, 2022 (October 2022 TP Final Rule). 87 FR 63860. In the October 2022 TP Final Rule, DOE determined that the amendments to the test procedure would alter the measured efficiency of VRF multi-split systems, as compared to ratings using the current Federal regulated metric, EER (*see* 10 CFR 431.97). In that document, DOE stated that testing pursuant to the amended test procedure would not be required until such time as manufacturers were required to comply with amended energy conservation

standards that are denominated in terms of IEER, should such standards be adopted. 87 FR 63860, 63880 (Oct. 20, 2022).

4. Proposed Standards

On March 1, 2022, DOE published a NOPR (March 2022 NOPR) in the **Federal Register** that proposed to adopt the energy conservation standards and equipment class structure for VRF multi-split systems as adopted in ASHRAE Standard 90.1–2016. 87 FR 11335 (March 1, 2022). Specifically, DOE proposed amended energy conservation standards VRF multi-split systems that rely on the IEER metric and are equivalent to those levels specified in ASHRAE Standard 90.1–2016. *Id.* at

87 FR 11336–11338. In the March 2022 NOPR, DOE outlined its plan to crosswalk the existing VRF energy conservation standards (denominated in terms of EER as the cooling metric) to the efficiency levels in ASHRAE Standard 90.1–2016 (denominated in terms of IEER) and requested comment. *Id.* at 87 FR 11342–11345. DOE preliminarily determined that it lacks the clear and convincing evidence required by the statute to adopt standards more stringent than the levels specified in the industry standard. *Id.* at 87 FR 11337. DOE received nine comments in response to the March 2022 NOPR from the interested parties listed in Table II–3.

TABLE II–3—MARCH 2022 NOPR WRITTEN COMMENTS

Commenter(s)	Abbreviation	Comment No. in the docket	Commenter type
Air-Conditioning, Heating, & Refrigeration Institute	AHRI	77	Industry Trade Association.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Northwest Energy Efficiency Alliance.	Joint Advocates	76	Efficiency Advocacy Organizations.
Carrier	Carrier	74	Manufacturer.
Daikin Comfort Technologies North America, Inc	Daikin	79	Manufacturer.
GE Appliances—a Haier Company	GE	78	Manufacturer.
Hydronic Industry Alliance—Commercial	HIA–C	67	Industry Trade Association.
Lennox International, Inc	Lennox	75	Manufacturer.
New York State Energy Research and Development Authority	NYSERDA	73	State Agency.
Pacific Gas and Electric Company, San Diego Gas & Electric, Southern California Edison (collectively referred to as the “California Investor-owned Utilities” or “CA IOUs”).	CA IOUs	72	Utilities.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.¹² To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the March 23, 2022 public meeting webinar for the VRF multi-split systems energy conservation standards NOPR, DOE cites the written comments throughout this final rule. In this case, DOE did not identify any oral comments provided during the webinar that are not substantively reflected by written comments.

III. General Discussion

DOE developed this final rule after considering oral and written comments, data, and information from interested parties that represent a variety of interests. The following discussion

addresses issues raised by these commenters.

A. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE’s adoption and amendment of test procedures. (42 U.S.C. 6314(a)) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. The IEER and COP standards proposed in the March 2022 NOPR and outlined in section II.B.4 of this document are measured according to the amended industry test standard for VRF multi-split systems, AHRI 1230–2021, in alignment with the VRF ECS Term Sheet discussed in section II.B.3 of this document.

In response to the March 2022 NOPR, Lennox and Daikin commented that they support the adoption of IEER, which is a part-load metric. (Lennox, No. 75 at pp. 1–2; Daikin, No. 79 at p. 1) Daikin stated that IEER is more representative of the operating cooling efficiency of a VRF system. (Daikin, No. 79 at p. 1) Lennox further commented

that the IEER metric would allow consumers to make comparisons of energy efficiency with other commercial air conditioners that utilize the IEER metric. (Lennox, No. 75 at pp. 1–2) Conversely, HIA–C argued that the standard should focus on certification of VRF performance at limits compared to performance at part-loads, as opposed to comparison between VRF systems or between VRF and other commercial air conditioners. (HIA–C, No. 67 at p. 1)

In response, DOE notes that EPCA does not require the Department to develop energy conservation standards that compare full-load and part-load performance. Instead, DOE must develop energy conservation standards that are as representative of real-world performance as possible. For VRF multi-split systems, this means including both full-load and part-load performance. Additionally, using the same performance metric for multiple types of equipment that serve the same purpose allows for consumers to make informed decisions when selecting their system. Thus, DOE is finalizing its proposal to amend energy conservation standards for VRF multi-split systems in terms of the IEER metric.

¹² The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop energy conservation standards for VRF multi-split systems. (Docket No. EERE–2018–BT–STD–0003, which is maintained at www.regulations.gov). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

In response to the March 2022 NOPR, Lennox expressed support for DOE adopting the industry test procedure AHRI 1230–2021, stating that it significantly improves the representativeness of the tested value for VRF equipment. (Lennox, No. 75 at pp. 1–2) In contrast, AHRI commented that DOE does not have the authority to propose adopting AHRI 1230–2021 as the Federal test procedure until such time as AHRI 1230–2021 is referenced in ASHRAE Standard 90.1 as the appropriate test standard for VRF systems, elaborating that EPCA requires DOE to adopt a Federal test procedure that is consistent with the applicable test procedure specified in the amended ASHRAE Standard 90.1. (AHRI, No. 77 at p. 2) AHRI and GE commented that DOE should support Addendum ay to ASHRAE Standard 90.1–2019 which updates the test procedure reference for VRF multi-split systems in ASHRAE Standard 90.1 to AHRI 1230–2021.¹³ (AHRI, No. 77 at p. 2; GE, No. 78 at p. 2)

NYSERDA encouraged DOE to start looking ahead to the next test procedure rulemaking and the potential for the VRF test procedure to address cold climate performance. Along these lines, NYSERDA urged DOE to add another low-temperature test point at 5 °F (and as low as –15 °F) for this equipment, as the current 47 °F and the optional 17 °F test condition are not low enough to ensure adequate system performance in cold climates. (NYSERDA, No. 73 at pp. 2–3) HIA–C similarly commented that DOE should clarify the temperatures at which COP tests are performed so as to allow comparison between performance at full and part loads. (HIA–C, No. 67 at p. 1) The commenter further stated that the IEER metric does not address connected cassettes or splits in combination, such that certain refrigerant volumes and tubing lengths are not represented, and it recommended an intermediate step to clarify the temperature at which a metric applies. (*Id.*)

DOE notes that all VRF test procedure issues have been handled in a separate rulemaking. DOE addressed the content and authority of its proposed test procedure amendments in the October 20, 2022 VRF TP Final Rule. *See* 87 FR 63860.

¹³ Addendum ay to ASHRAE Standard 90.1–2019, which updates the test procedure reference for VRF multi-split systems to AHRI 1230–2021, has been incorporated into the recently published ASHRAE Standard 90.1–2022.

B. Methodology for Efficiency Crosswalk Analysis

1. Crosswalk Background and Overview

Consistent with the recommendation of the Working Group, DOE is amending the energy conservation standards for VRF multi-split systems to rely on the IEER metric for cooling efficiency, and maintaining the metric for heating efficiency (*i.e.*, COP). As discussed in the March 2022 NOPR, the Department has concluded that a change of metrics would be beneficial for a number of reasons, including that the IEER metric provides a more representative measure of field performance of VRF multi-split systems by weighting the full-load and part-load (75-percent, 50-percent, and 25-percent of full-load capacity) efficiencies by the average amount of time the equipment spends operating at each load. 87 FR 11335, 11342 (March 1, 2022).

As stated, EPCA prohibits DOE from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of covered equipment. (42 U.S.C. 6313(a)(6)(B)(iii)(I)); commonly referred to as EPCA’s “anti-backsliding provision”) In consideration of the IEER metric and to ensure any potential amendment would not violate EPCA’s “anti-backsliding” provision, as part of the ASRAC Working Group activities, DOE conducted a crosswalk analysis to validate both the translation of the EER levels currently required by the DOE standards to corresponding IEER levels, as well as the IEER efficiency levels as recommended by the Working Group. The crosswalk analysis translates the current Federal EER standards (measured per the current DOE test procedure) to IEER levels of equivalent stringency (measured per the updated AHRI Standard 1230). (Docket No. EERE–2018–BT–STD–0003–0056)

The energy conservation standards presented in this document were developed based on an update to the relevant industry test standard (*i.e.*, the 2019 draft test procedure AHRI 1230 that was finalized as ASHRAE 1230–2021). Compared to the current Federal test procedure (which references ANSI/AHRI 1230–2010), AHRI 1230–2021 included two substantive changes that impact the translation of standards in EER to standards using IEER. Specifically, DOE considered the following changes in its crosswalk analysis in addition to the metric change from EER to IEER:

(1) Maximum sensible heat ratio (SHR) limits of 0.82 and 0.85 were added for full-load and 75-percent, part-

load conditions, respectively. SHR represents the ratio of sensible cooling capacity (*i.e.*, the ability to change the temperature of indoor air) to the total cooling capacity, which also includes latent cooling capacity (*i.e.*, the ability to remove moisture from indoor air). For example, an SHR of 0.80 indicates that 80 percent of the capacity of a system reduces the temperature of the air and the remaining 20 percent dehumidifies the air.

(2) A controls verification procedure (CVP) was added that verifies that the values provided by manufacturers in the supplemental test instruction (STI) for setting critical parameters during steady-state testing are within the range of critical parameters that would be used by the system’s native controls at the same conditions.

On November 5, 2019, DOE presented its crosswalk findings to the Working Group to inform the development of recommended standards levels for VRF multi-split systems in terms of the new test procedure and cooling metric. These findings demonstrated that the translation of the current EER standards to the recommended IEER values would not decrease the minimum required energy efficiency of VRF multi-split systems using a minimally-compliant model. DOE also presented to the Working Group anonymized and aggregated data provided by VRF multi-split system manufacturers. These data showed a preliminary translation of ratings to the IEER metric in terms of the updated test procedure for a collection of VRF multi-split systems spanning four equipment classes. The crosswalked results included the IEER efficiency level specified in the VRF ECS term sheet for the selected classes. Detailed discussion of the crosswalk presentation can be found in Docket No. EERE–2018–BT–STD–0003–0056.

Given that translating the current EER levels to IEER according to the updated test procedure does not provide for a single point answer (as would thereby allow for a direct comparison), DOE stated in the March 2022 NOPR that it believes it is reasonable to ensure that the recommended value lies within the range resulting from DOE’s evaluation as a proxy for understanding whether there is a potential for backsliding. Consequently, DOE tentatively determined that the recommended IEER levels are at least equivalent in stringency to the current EER levels. Further, given that IEER is a more comprehensive metric (reflecting energy efficiency across a range of operating conditions, as opposed to the efficiency at a single condition), DOE tentatively determined that the recommended IEER

levels would not decrease the minimum required energy efficiency of a VRF multi-split system. 87 FR 11335, 11343 (March 1, 2022). DOE received no comments to the contrary in response to the March 2022 NOPR. Consequently, for the reasons previously explained, DOE maintains this determination in the final rule.

2. Crosswalk Details and Results

As discussed in further detail in the March 2022 NOPR, DOE conducted a crosswalk analysis to account for the translation from EER to IEER, as well as changes in the updated industry test standard—namely the addition of SHR limits and the introduction of the CVP. See 87 FR 11335, 11343–11345 (March 1, 2022). Because these three factors have interacting effects on the measured cooling performance of VRF multi-split systems, DOE modeled their interaction holistically and did not examine incremental changes in performance due to any one factor.

DOE only conducted a crosswalk analysis for the VRF cooling mode efficiency, as DOE did not propose to change the heating efficiency metric (*i.e.*, COP), nor did the changes to the test procedure for VRF multi-split systems impact measured efficiency in heating mode. To develop a crosswalk approach that is applicable to all equipment classes of VRF multi-split systems, DOE analyzed a basic model representative of equipment classes with high sales volume.¹⁴ Specifically, DOE selected an air-cooled VRF multi-split heat pump system in the cooling capacity range greater than 135,000 Btu/h and less than or equal to 240,000 Btu/h without heat recovery. DOE created a performance model using VapCyc and CoilDesigner software¹⁵ to evaluate capacity and efficiency of the selected system per the updated industry test standard at full-load cooling and reduced load conditions.

DOE also sought to translate the current EER standards to equivalent

IEER standards when tested according to the updated industry test standard. Consequently, DOE investigated ways to translate the SHR requirements and CVP procedure introduced by the amended test procedure for VRF multi-split systems. AHRI 1230–2021 sets SHR limits of 0.82 and 0.85 at the full-load cooling condition and the 75-percent part-load cooling condition, respectively, but does not include SHR limits for the 50-percent or 25-percent part-load cooling conditions. Because manufacturers do not currently certify or publicize any information about SHR at the full-load EER test condition, DOE was unable to precisely determine SHR values representative of a baseline EER VRF multi-split system. So, to account for the effect of the SHR limits in the updated industry test standard in its crosswalk analysis, DOE relied on the native controls test data to establish a range of potential initial SHR values observed at the full-load and 75-percent part-load IEER test conditions. 87 FR 11335, 11343–11344 (March 1, 2022).

To account for the addition of a CVP in AHRI 1230–2021, DOE tentatively concluded that using information about the ranges of operational settings observed during native controls testing to represent a future system that would pass the CVP (*i.e.*, a system for which the certified critical parameter settings would be validated by a CVP conducted with the system operating under native controls) was the most accurate approach for estimating how manufacturers would certify critical parameter control settings as part of testing to IEER as measured by AHRI 1230–2021. *Id.* at 87 FR 11344.

For additional detail regarding the methods used in the crosswalk for VRF multi-split systems, see section III.A.2 of the March 2022 NOPR. 87 FR 11335, 11343–11344 (March 1, 2022).

Based on the modeling conducted, the expected performance of the representative equipment class of VRF multi-split systems when tested according to AHRI 1230–2021 would be in the range of 13 to 16 IEER. Because of the wider range of operation conditions captured in IEER as well as the various strategies that manufacturers may employ to respond to the test procedure changes, a single EER baseline value inherently translates to a range of IEER values.

As discussed, the IEER metric captures performance at additional part-load operating conditions not considered by the EER metric; therefore, a single EER value translates to a range

of potential IEER values.¹⁶ IEER captures the impacts of design features and control strategies that may not affect full-load operation but do affect part-load operation. For example, VRF multi-split systems may use different strategies for reducing capacity at partial loads like reducing the number of thermally-active indoor units or slowing compressor speeds, which may result in differential impacts on measured IEER, but which would not have any impact on the measured full-load performance EER. DOE also recognizes that there are a variety of paths that manufacturers may take to account for the new test procedure, and that the crosswalk analysis approximates how manufacturers in the aggregate may respond to test procedure changes. For example, some manufacturers may elect to meet the new SHR limitations by reducing evaporating temperatures, while other manufacturers may meet the new SHR limitations by reducing indoor airflow and decreasing the number of thermally-active indoor units. Each strategy may have different trade-offs in terms of overall system performance and measured energy efficiency.

As described in section I of this document, the Working Group recommended efficiency levels for VRF multi-split systems that align with the efficiency levels specified in ASHRAE Standard 90.1–2016 in terms of IEER and COP. While DOE's crosswalk analysis showed that a single EER baseline could result in a range of IEER values, the IEER levels included in the VRF ECS Term Sheet (which the Working Group recommended as an appropriate crosswalk of current Federal EER standards) are within the range of DOE's crosswalked results. Based on this analysis, in the March 2022 NOPR, DOE tentatively determined that the recommended IEER levels are at least equivalent in stringency to the current EER levels. 87 FR 11335, 11337 (March 1, 2022). Further, given that IEER is a more comprehensive metric (reflecting energy efficiency across a range of operating conditions, as opposed to the efficiency at a single condition), DOE tentatively determined that the recommended IEER levels would not decrease the minimum required energy efficiency of a VRF multi-split system, thereby avoiding statutorily impermissible backsliding with respect to the current Federal standards in terms of EER. *Id.* at 87 FR 11345.

¹⁴ According to a report from Cadeo group, air-cooled VRF multi-split heat pump systems in the cooling capacity range greater than 135,000 Btu/h and less than or equal to 240,000 Btu/h without heat recovery account for 12.4 percent of the VRF multi-split system market. Air-cooled VRF multi-split systems in the same capacity range equipped with heat recovery account for an additional 32.6 percent of the VRF multi-split system market. (EERE–2017–BT–TP–0018–0002)

¹⁵ VapCyc and CoilDesigner are HVAC energy modeling software programs. CoilDesigner is a detailed heat exchanger modeling program. VapCyc integrates CoilDesigner heat exchanger simulations with compressor and expansion models to complete a refrigeration cycle model to simulate performance of an air conditioning or heat pump system at specific operating conditions. (Available at: www.optimizedthermalsystems.com.) (Last accessed Dec. 30, 2022)

¹⁶ In a January 2016 energy conservation standards direct final rule for ACUACs, DOE discussed a metric translation from EER to IEER in which a single EER level corresponds to a range of IEERs. 81 FR 2420, 2452 (Jan. 15, 2016).

Finally, DOE determined that no changes to heating mode ratings in terms of COP are expected from the changes to the test procedure for VRF multi-split systems included in AHRI 1230–2021. *Id.*

In response to the March 2022 NOPR, AHRI, Carrier, and Lennox commented that they support the proposed crosswalk analysis methodology and results. (AHRI, No. 77 at p. 3; Carrier, No. 74 at p. 2; Lennox, No. 75 at p. 2) AHRI and Carrier further commented that they felt that DOE's initial testing supports their tentative conclusion that the recommended IEER levels are at least equivalent in stringency to current EER levels. (AHRI, No. 77 at p. 3; Carrier, No. 74 at p. 2) Carrier commented that they agree with DOE that the recommended IEER levels would not decrease the minimum required energy efficiency of VRF systems. (Carrier, No. 74 at p. 2)

However, AHRI and Carrier argued that the proposed changes to the test procedure impact the measured efficiency of VRF multi-split systems in a way that increases the stringency of the standards from the current EER standards as measured by AHRI 1230–2010 and leads to energy savings. (AHRI, No. 77 at p. 3; Carrier, No. 74 at p. 2)

In response to these comments, DOE notes that, as discussed in this section, the crosswalk from EER, as measured by AHRI 1230–2010 to IEER as measured by AHRI 1230–2021, resulted in a range of values, which includes the proposed standards. DOE was not provided data

that shows that the standards proposed in the March 2022 NOPR are higher in stringency than the current EER levels. DOE also did not receive any negative comments regarding its crosswalk analysis methodology, and, therefore, the Department has not changed it in this final rule. Accordingly, for the reasons previously discussed, DOE maintains its conclusion that the recommended IEER levels are at least equivalent in stringency to the current EER levels.

3. Equipment Class Structure for VRFs

In the July 2019 NODA/RFI, DOE discussed two areas where the equipment class structure for VRF multi-split systems differs between ASHRAE Standard 90.1 and the Federal standards. 84 FR 32328, 32334 (July 8, 2019). These differences were further examined in some detail in the March 2022 NOPR. 87 FR 11335, 11345–11346 (March 1, 2022). The differences can be summarized as follows:

(1) *Capacity break points.* For water-source VRF multi-split heat pumps, the current Federal standards include VRF multi-split systems with cooling capacity greater than or equal to 135,000 Btu/h and less than 760,000 Btu/h in a single category. ASHRAE Standard 90.1–2016 splits this grouping at 240,000 Btu/h to create capacity categories of greater than or equal to 135,000 and less than 240,000 Btu/h and greater than or equal to 240,000 and less than 760,000 Btu/h. Also for water-source VRF multi-split systems, the current Federal standards include

separate classes for systems with cooling capacity less than 17,000 Btu/h and for systems with cooling capacity between 17,000 Btu/h and 65,000 Btu/h. ASHRAE Standard 90.1–2016 groups these classes together into a single equipment class with cooling capacity less than 65,000 Btu/h.

(2) *Heating type.* The current Federal standards are disaggregated for certain classes of VRF multi-split systems based on heating type. For all air-cooled VRF multi-split air conditioners and heat pumps with cooling capacity greater than or equal to 65,000 Btu/h, the Federal cooling standards differ by 0.2 EER points depending on whether a system is equipped with “no heating or electric resistance heating” or “all other types of heating.” For water-source VRF multi-split heat pumps, some capacity classes disaggregate instead by systems with heat recovery versus without heat recovery (also with a 0.2 EER difference in the applicable standards classes). Other water-source VRF multi-split heat pump standards are not disaggregated beyond the specified capacity range. ASHRAE 90.1–2016 disaggregates standards for air-cooled and water-source VRF multi-split heat pumps based on the presence of heat recovery, instead of “heating type.” Air-cooled VRF multi-split air conditioners do not have subdivided cooling efficiency levels based on heating type in ASHRAE Standard 90.1–2016.

These differences are presented in Table III–1:

TABLE III–1—COMPARISON OF CURRENT DOE EFFICIENCY LEVELS WITH ASHRAE STANDARD 90.1

Equipment type	Cooling capacity	Heating type	DOE efficiency level	ASHRAE standard 90.1–2016/2019 efficiency level
VRF Multi-Split Air Conditioners (Air-Cooled).	≥65,000 Btu/h and <135,000 Btu/h	No Heating or Electric Resistance Heating.	11.2 EER	11.2 EER, 15.5 IEER.
	≥135,000 Btu/h and <240,000 Btu/h	All Other Types of Heating	11.0 EER	No Standard. ³
		No Heating or Electric Resistance Heating.	11.0 EER	11.0 EER, 14.9 IEER.
	≥240,000 Btu/h and <760,000 Btu/h	All Other Types of Heating	10.8 EER	No Standard. ³
		No Heating or Electric Resistance Heating.	10.0 EER	10.0 EER, 13.9 IEER.
		All Other Types of Heating	9.8 EER	No Standard. ³
VRF Multi-Split Heat Pumps (Air-Cooled).	≥65,000 Btu/h and <135,000 Btu/h	No Heating or Electric Resistance Heating ¹ .	11.0 EER, 3.3 COP	11.0 EER, 14.6 IEER, 3.3 COP.
	≥135,000 Btu/h and <240,000 Btu/h	All Other Types of Heating ^{1 2}	10.8 EER, 3.3 COP	10.8 EER, 14.4 IEER, 3.3 COP.
		No Heating or Electric Resistance Heating ¹ .	10.6 EER, 3.2 COP	10.6 EER, 13.9 IEER, 3.2 COP.
	≥240,000 Btu/h and <760,000 Btu/h	All Other Types of Heating ^{1 2}	10.4 EER, 3.2 COP	10.4 EER, 13.7 IEER, 3.2 COP.
		No Heating or Electric Resistance Heating ¹ .	9.5 EER, 3.2 COP	9.5 EER, 12.7 IEER, 3.2 COP.
		All Other Types of Heating ^{1 2}	9.3 EER, 3.2 COP	9.3 EER, 12.5 IEER, 3.2 COP.
VRF Multi-Split Heat Pumps (Water-Source).	<17,000 Btu/h	Without heat recovery	12.0 EER, 4.2 COP	12.0 EER, 16.0 IEER, 4.3 COP.
		With heat recovery	11.8 EER, 4.2 COP	11.8 EER, 15.8 IEER, 4.3 COP.
	≥17,000 Btu/h and <65,000 Btu/h ...	Without heat recovery	12.0 EER, 4.2 COP	12.0 EER, 16.0 IEER, 4.3 COP.

TABLE III–1—COMPARISON OF CURRENT DOE EFFICIENCY LEVELS WITH ASHRAE STANDARD 90.1—Continued

Equipment type	Cooling capacity	Heating type	DOE efficiency level	ASHRAE standard 90.1–2016/2019 efficiency level
	≥65,000 Btu/h and <135,000 Btu/h	With heat recovery	12.0 EER, 4.2 COP	11.8 EER, 15.8 IEER, 4.3 COP.
		Without heat recovery		12.0 EER, 16.0 IEER, 4.3 COP.
		With heat recovery		11.8 EER, 15.8 IEER, 4.3 COP.
	≥135,000 Btu/h and <240,000 Btu/h	Without heat recovery	10.0 EER, 3.9 COP	10.0 EER, 14.0 IEER, 4.0 COP.
		With heat recovery		9.8 EER, 3.9 COP
		Without heat recovery		10.0 EER, 12.0 IEER, 3.9 COP
	≥240,000 Btu/h and <760,000 Btu/h	Without heat recovery	10.0 EER, 3.9 COP	10.0 EER, 12.0 IEER, 3.9 COP
		With heat recovery		9.8 EER, 11.8 IEER, 3.9 COP.
		Without heat recovery		10.0 EER, 12.0 IEER, 3.9 COP

¹ In terms of current Federal standards, VRF Multi-Split Heat Pumps (Air-Cooled) with heat recovery fall under the heating type “All Other Types of Heating” unless they also have electric resistance heating, in which case it falls under the category for “No Heating or Electric Resistance Heating.”

² In ASHRAE Standard 90.1, this equipment class is referred to as units with heat recovery rather than all other types of heating.

³ ASHRAE Standard 90.1 only includes standards for VRF air conditioners with “electric resistance or none” heating type. Because stakeholders have expressed that it is unlikely that VRF air conditioners would ever be paired with other forms of supplemental heating, DOE’s amended equipment classes for VRF air conditioners are condensed using “all types of heating” to ensure no change in coverage or backsliding.

In the March 2022 NOPR, DOE proposed to adopt the ASHRAE Standard 90.1–2016 equipment class structure for VRF multi-split systems in its regulations at 10 CFR 431.97, staying consistent with EPCA’s direction to establish amended uniform national standards for the VRF multi-split systems at the minimum levels specified in ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) 87 FR 11335, 11345–11347 (March 1, 2022). In the March 2022 NOPR, DOE stated that to align with this class structure, DOE would amend the existing DOE class structure by expanding the number of VRF water-source heat pump classes, reducing the number of air-cooled VRF air conditioner classes, and amending the convention for heating type for heat pump systems with and without heat recovery. *Id.* at 87 FR 11346.

DOE proposed a minor clarification in the language used to describe the heating type for VRF multi-split system heat pumps to explicitly designate which classes are with and without heat recovery. 87 FR 11335, 11346–11347 (March 1, 2022). ASHRAE 90.1–2016 currently includes separate classes for systems with and without heat recovery, designated as “VRF multi-split systems” or “VRF multi-split system with heat recovery,” while DOE’s proposal revised these descriptions to explicitly state either “heat pump without heat recovery” or “heat pump with heat recovery.” 87 FR 11335, 11346 (March 1, 2022).

DOE also proposed in the March 2022 NOPR to include separate efficiency levels for VRF multi-split air conditioners that: (1) have either electric resistance heat or no heat and (2) have any other type of heating. Specifically, DOE proposed to label the condensed

equipment classes for VRF multi-split air conditioners as having “All” types of heating, and to set IEER standards for the proposed condensed classes that are equivalent in stringency to the EER standards for the class with “electric resistance or none” heating type. 87 FR 11335, 11346–11347 (March 1, 2022). DOE tentatively concluded that setting IEER standards to cover “all” kinds of heating would not constitute an increase of stringency for any models currently in existence because DOE did not have any knowledge of VRF multi-split air conditioners on the market that have “all other types of heating” (*e.g.*, a furnace). *Id.* Such approach was intended to eliminate any anti-backsliding concerns that might otherwise arise if DOE were to adopt a class structure that could be viewed as potentially reducing the current extent of coverage of the VRF energy conservation standards.

Finally, in the March 2022 NOPR, DOE tentatively concluded that adopting the proposed class structure and efficiency levels would not result in a change in stringency for any classes. *Id.* This was because, in cases where DOE is proposing to subdivide or condense equipment classes relative to the existing DOE equipment class structure, the IEER levels recommended by the Working Group are within the limits of precision determined by DOE’s crosswalk translation. For example, in cases where the current DOE equipment class only includes a single EER standard but ASHRAE Standard 90.1–2016 includes separate IEER standards for classes with and without heat recovery, both of the ASHRAE Standard 90.1 IEER levels fall within the crosswalk range determined by DOE to

represent equivalent stringency to existing EER standard. *Id.*

In response, AHRI, Carrier, the Joint Advocates, and the CA IOUs commented that they support DOE’s proposed equipment class structure. (AHRI, No. 77 at p. 3; Carrier, No. 74 at p. 2; Joint Advocates, No. 76 at p. 1; CA IOUs, No. 72 at p. 1) AHRI and Carrier stated that the structure accurately reflects the market for VRFs. (AHRI, No. 77 at p. 3; Carrier, No. 74 at p. 2) Carrier also stated that alignment with the industry standard would facilitate rulemakings in response to future updates. (Carrier, No. 74 at p. 2) AHRI further commented that Addendum ay includes harmonization with the additional clarification for heating type. (AHRI, No. 77 at p. 3)

Based on comment responses, in this final rule, DOE is finalizing its proposals to adopt the ASHRAE Standard 90.1–2016 equipment class structure for VRF multi-split systems in its regulations at 10 CFR 431.97, to clarify language used to describe the heating type for VRF multi-split system heat pumps to explicitly designate which classes are with and without heat recovery, and to include separate efficiency levels for VRF multi-split air conditioners that: (1) have either electric resistance heat or no heat and (2) have any other type of heating.

IV. Estimates of Potential Energy Savings

As required under 42 U.S.C. 6313(a)(6)(A)(i), for VRF multi-split system equipment classes for which ASHRAE Standard 90.1–2016 set levels more stringent than the current Federal standards, DOE performed an assessment to determine the energy-savings potential of amending Federal

standard levels to reflect the efficiency levels specified in ASHRAE Standard 90.1–2016. In the July 2019 NODA/RFI, DOE presented the findings of the energy savings potential for the six considered equipment classes for which the Department was triggered. 84 FR 32328, 32335 (July 8, 2019). DOE tentatively determined, based on a report by Cadeo Group,¹⁷ that four of the six affected classes—those with cooling capacities that are less than 17,000 Btu/h or greater than or equal to 135,000 Btu/h (with or without heat recovery), do not have any market share and, thus, no energy savings potential from amended standards. The Cadeo report showed that the remaining two affected classes, with cooling capacities greater than 17,000 Btu/h and less than 135,000 Btu/h, represented under three percent of the VRF multi-split system market. DOE tentatively concluded that potential energy savings for these equipment classes were *de minimis*. *Id.* DOE noted that in ASHRAE Standard 90.1–2016, the COP was raised by 0.1 on both of these equipment classes, and that most commercial buildings are cooling dominant. *Id.* DOE is unaware of any additional information available in the intervening period that would alter its initial understanding of the energy savings potential of the VRF multi-split systems equipment classes for which DOE was triggered by ASHRAE Standard 90.1–2016. Given this information, in this final rule DOE concludes that energy savings for these equipment classes are *de minimis*. Consideration of more-stringent efficiency levels than those specified in ASHRAE Standard 90.1 are discussed in section V.A of this document.

V. Conclusions

A. Consideration of More-Stringent Efficiency Levels

When triggered by an update to ASHRAE Standard 90.1, EPCA requires DOE to establish an amended uniform national standard for equipment classes at the minimum level specified in the amended ASHRAE Standard 90.1 unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE Standard 90.1 for the

equipment class would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(I)–(II))

As discussed in section II.B.3 of this final rule, following publication of the July 2019 NODA/RFI, the ASRAC Working Group reached consensus on two term sheets containing recommendations regarding the test procedure and energy conservation standards for VRF multi-split systems. As discussed in section III.B of this document, the recommended standards are consistent with the crosswalk conducted by DOE to translate the existing Federal standards in terms of EER to equivalent levels in terms of IEER, measured per AHRI 1230–2021. These recommended efficiency levels also align with the IEER and COP levels in ASHRAE Standard 90.1–2016. The Working Group did not consider more-stringent efficiency levels.

In the March 2022 NOPR, DOE considered but did not estimate potential energy savings that would occur from more-stringent standards. To assess the magnitude of potential energy savings from amended standards and determine which level, if any, of more-stringent standards would be economically justified, DOE must be able to properly represent the no-new-standards case—the case without amended standards—and must be able to properly characterize the technology options and costs associated with specific levels of efficiency. With regards to VRF multi-split systems, this would require developing efficiency data for the entire market in terms of IEER measured per AHRI 1230–2021. 87 FR 11335, 11348 (March 1, 2022).

DOE considered two approaches for developing market-wide performance data in terms of IEER measured per AHRI 1230–2021: (1) DOE examined whether any such data exist in publicly-available sources, and (2) DOE considered whether existing performance data in terms of EER (measured per the current Federal test procedure) could be effectively translated to IEER (measured per AHRI 1230–2021). *Id.*

On the first approach, DOE found that public data in terms of IEER measured per AHRI 1230–2021 are not available, as the rating of VRF multi-split systems using the updated metric and test procedure is not currently required. DOE acknowledged that IEER performance data are widely represented by VRF manufacturers, but that all such data are measured per an earlier version of the industry test standard (AHRI 1230–2014) and, thus,

not directly comparable. DOE also found that the AHRI Directory did not yet require IEER representations measured per AHRI 1230–2021. 87 FR 11335, 11348 (March 1, 2022).

On the second approach, DOE considered the results of its crosswalk analysis to determine whether a market-wide translation of existing EER data to IEER data (measured per AHRI 1230–2021) was possible. As discussed in section III.A the NOPR, the combined effect of translating the Federal cooling efficiency metric from EER to IEER and the effect of test procedure changes between the current DOE test procedure (which references AHRI 1230–2010) and the proposed DOE test procedure (which would reference AHRI 1230–2021) is likely to produce different impacts on measured efficiency across different manufacturers and different models. As DOE's crosswalk analysis has shown, a minimally-compliant VRF multi-split system with 10.8 EER can result in a range of crosswalked IEER levels from 13 to 16, depending on control inputs selected by the manufacturer. Additionally, an estimation of energy savings potentials of more-stringent energy efficiency levels would require developing efficiency data for the entire VRF multi-split system market, which would be a much broader analysis than that conducted for the crosswalk. The crosswalk analysis conducted to support the Working Group recommendations and presented in the NOPR only translated the baseline efficiency level between the metrics for a single class of VRF multi-split system and did not translate all efficiency levels currently represented in the market. As noted, there are insufficient market data regarding the performance of VRF multi-split systems measured in terms of IEER per AHRI 1230–2021. As such, DOE preliminarily determined that it lacked clear and convincing evidence to adopt more-stringent standard levels. Regardless of whether DOE preliminarily determined that more-stringent standards would be technologically feasible and economically justified, DOE would be unable to adopt such standards absent a determination, supported by clear and convincing evidence, that more-stringent standards would result in significant additional energy savings. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) Therefore, having preliminarily determined that it lacks clear and convincing evidence as to the energy savings that would result from more-stringent standards, DOE did not conduct analysis as to the technological

¹⁷ Cadeo Report, Variable Refrigerant Flow: A Preliminary Market Assessment. See: www.regulations.gov/document?D=EERE-2017-BT-TP-0018-0002. The report presents market share by VRF multi-split system equipment class, based on confidential sales data given in interviews with several major manufacturers of VRF multi-split equipment and DOE's Compliance Certification Database.

feasibility or economic justification of such standards for VRF multi-split systems. 87 FR 11335, 11348 (March 1, 2022).

In response to the March 2022 NOPR, AHRI commented that it supports the proposed standards. (AHRI, No. 77 at pp. 1–2) The CA IOUs, Lennox, Daikin, and Joint Advocates commented that they support DOE's proposal to adopt the VRF ECS levels from the ASRAC Working Group term sheet. (CA IOUs, No. 72 at p. 1; Lennox, No. 75 at p. 1; Daikin, No. 79 at p. 1; Joint Advocates, No. 76 at p. 1) The CA IOUs commented that they acknowledge the challenges associated with the crosswalk analysis, and that they agree that DOE lacks the evidence necessary to justify efficiency levels above those in ASHRAE Standard 90.1. (CA IOUs, No. 72 at p. 1) Conversely, NYSERDA commented that it is not convinced that the levels being set are the most efficient levels that DOE can justify and urged DOE to reevaluate its VRF standards once a database of equipment is available. (NYSERDA, No. 73 at p. 2)

After carefully considering these comments, DOE concludes that it does not have the clear and convincing evidence necessary to justify the adoption of more-stringent energy conservation standard levels for VRF multi-split systems. To be able to properly characterize the technology options and associated costs, DOE would require efficiency data for the entire market in terms of IEER measured per AHRI 1230–2021. As NYSERDA noted, DOE does not presently have such data available. Consequently, DOE concludes that more-stringent standards cannot be justified at this time. Therefore, DOE has not conducted analysis as to the technological feasibility or economic justification of more-stringent standards for VRF multi-split systems.

B. Review Under the Six-Year-Lookback Provision

As discussed, DOE is required to conduct an evaluation of each class of covered equipment in ASHRAE Standard 90.1 every six years. (42 U.S.C. 6313(a)(6)(C)(i)) Accordingly, DOE is evaluating 12 of the Federal VRF equipment classes for which ASHRAE Standard 90.1–2016 did not increase the stringency of the standards. Energy conservation standards for the two remaining classes of VRF multi-split systems (*i.e.*, three-phase, air-cooled VRF multi-split systems with cooling capacity less than 65,000 Btu/h) are not addressed in this final rule and instead will be addressed in a separate energy conservation standards rulemaking.

DOE may only adopt more-stringent standards pursuant to the six-year-lookback review if the Secretary determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the adoption of more-stringent standards would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i)(II); 42 U.S.C. 6313(a)(6)(B); 42 U.S.C. 6313(a)(6)(A)(ii)(II))

For the reasons presented in the prior section, DOE has determined that it lacks clear and convincing evidence that more-stringent standards for these 12 equipment classes would result in significant additional energy savings. Because DOE does not have sufficient data to meet the “clear and convincing” threshold for these 12 classes, DOE did not conduct an analysis of standard levels more stringent than the current Federal standard levels for VRF multi-split systems that were not amended in ASHRAE Standard 90.1–2016. See section V.A of this document for further discussion of the consideration of energy efficiency levels more stringent than the ASHRAE Standard 90.1–2016 levels.

C. Amended Energy Conservation Standards

Based on the foregoing, DOE is amending energy conservation standards for VRF multi-split systems in terms of IEER and COP equivalent to those specified for VRF multi-split systems in ASHRAE Standard 90.1–2016, which align with the levels recommended in the ASRAC Working Group's VRF ECS Term Sheet. The amended standards are presented in Table I–1. Compliance with the amended standards is required for VRF multi-split systems manufactured in, or imported into, the United States starting January 1, 2024, which aligns with the Working Group's recommendation in the VRF ECS Term Sheet.

As discussed, ASHRAE Standard 90.1–2016 includes more-stringent COP standards for six water-source VRF multi-split heat pump classes. EPCA provides that the compliance date for prescribing levels contained in ASHRAE Standard 90.1 shall be on or after a date that is two or three years (depending on the equipment type or size) after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE standard. (42 U.S.C. 6313(a)(6)(D)) The effective date for amended COP standards in ASHRAE Standard 90.1–2016 was January 1, 2017. In the March 2022 NOPR, DOE

acknowledged that the statute originally tied calculation of a compliance date to either two or three years after the effective date of amended ASHRAE Standard 90.1. However, because these dates have passed, DOE proposed the date recommended in the VRF ECS Term Sheet (*i.e.*, January 1, 2024) as a reasonable amount of lead time supported by a broad array of interested stakeholders. DOE stated that if it received comments in response to the NOPR that recommend alternative compliance date(s) later than January 1, 2024, DOE would consider adopting alternative compliance date(s) in the final rule. 87 FR 11335, 11349 (March 1, 2022).

In response to the March 2022 NOPR, AHRI commented that, given that January 1, 2024 is rapidly approaching, DOE should consider using its authority under 42 U.S.C. 6313(a)(6)(A)(ii)(I) to make the proposed energy conservation standard effective sooner than 18 months after the rule is finalized. (AHRI, No. 77 at p. 2) Daikin encouraged DOE to finalize the VRF ECS rulemaking quickly, as industry needs as much time as possible to comply, especially with the revised VRF test procedure. (Daikin, No. 79 at p. 1) The CA IOUs, NYSERDA, and Joint Advocates also commented their support for the proposed compliance date of January 1, 2024. (CA IOUs, No. 72 at p. 1; NYSERDA, No. 73 at p. 1; Joint Advocates, No. 76 at p. 1)

GE commented that, because of the amount of time that has passed since the ASRAC Working Group term sheet was published, DOE should postpone the compliance date, as one year of lead time is not sufficient time for manufacturers to evaluate all products and make necessary changes to meet the new standard according to the new test procedure. (GE, No. 78 at p. 2) Similarly, Carrier commented that DOE should consider shifting the compliance date by 12–18 months, so that manufacturers have a minimum of two years between the publication of the final rule and the compliance date to give manufacturers enough time to implement the new test procedure and redesign their impacted equipment accordingly. (Carrier, No. 74 at p. 1)

In response, DOE notes that manufacturers have been aware of the updated levels since the ASRAC Working Group reached consensus on the VRF ECS Term Sheet in 2019. While DOE acknowledges that the test procedure changes will impact rated efficiencies of VRF multi-split systems, the Department further notes that manufacturers have been aware of these changes since at least the publication of

AHRI 1230–2021. Thus, DOE concludes that manufacturers have had sufficient time to adjust to both the amended VRF energy conservation standards and the new VRF test procedure. Therefore, in this final rule, DOE maintains its compliance date of January 1, 2024, for amended standards for VRF multi-split systems.

NYSERDA commented that DOE should consider beginning a new standards rulemaking prior to the date mandated under the six-year-lookback requirement, as this will allow for advancements in the energy conservation standards for VRF multi-split systems based upon certification data generated by application of the new test procedure. (NYSERDA, No. 73 at p. 2)

On NYSERDA's point, DOE will consider appropriate timing of its next proceeding for VRF multi-split systems in light of the relevant statutory deadlines and compliance dates for any future rulemakings.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as

well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this 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 rule does not constitute a “significant regulatory action” under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed 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 E.O. 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 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 to amend the Federal energy conservation standards for VRF multi-split systems under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth in the following paragraphs.

In this final rule, DOE is amending the existing Federal minimum energy conservation standards for VRF multi-split systems under EPCA's ASHRAE trigger requirement and the six-year lookback provision. Under the trigger, EPCA directs that if ASHRAE amends ASHRAE Standard 90.1, DOE must

adopt uniform national amended standards at the new ASHRAE efficiency level, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that adoption of a more-stringent level would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) Under the six-year-lookback, DOE must also review energy efficiency standards for VRF multi-split systems every six years and either: (1) issue a notice of determination that the standards do not need to be amended based upon the criteria in 42 U.S.C. 6313(a)(6)(A) (*i.e.*, that there is clear and convincing evidence to show that adoption of a more-stringent level would save significant additional energy and would be technologically feasible and economically justified); or (2) issue a notice of proposed rulemaking including new proposed standards based on certain criteria and procedures in 42 U.S.C. 6313(a)(6)(B). (42 U.S.C. 6313(a)(6)(C))

In this document, DOE is updating the standards for VRF multi-split systems at 10 CFR 431.97 to align with the most recent version of ASHRAE Standard 90.1, including the updated COP levels for the six classes of VRF multi-split water-source heat pumps on which DOE was triggered. DOE is also expressing cooling efficiency standards in terms of the IEER metric, as measured according to the amended industry test procedure AHRI 1230–2021, and removing standard levels in terms of the EER metric, as measured according to the current DOE test procedure. Finally, DOE is amending the equipment class structure for VRF multi-split systems to align with the equipment class structure present in ASHRAE Standard 90.1, with regards to capacity break points, supplementary heating type, and presence of heat recovery. The amended standard levels have a compliance date applying to all VRF multi-split systems manufactured on or after January 1, 2024. Table 14 to paragraph (f)(2) of 10 CFR 431.97 accounts for all changes between the previous Federal VRF multi-split system standards and those outlined in ASHRAE Standard 90.1–2016 (as reaffirmed in ASHRAE Standard 90.1–2019).

DOE uses the Small Business Administration (SBA) small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the North American Industry Classification

System (NAICS).¹⁸ The SBA considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121.

VRF multi-split system manufacturers are classified under NAICS code 333415, “Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.” The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category. This employee threshold includes all employees in a business’s parent company and any other subsidiaries.

Prior to the March 2022 NOPR, DOE conducted a focused inquiry into small business manufacturers of the equipment covered by this rulemaking. DOE used available public information to identify potential small manufacturers that manufacture domestically. DOE identified manufacturers using DOE’s Compliance Certification Database¹⁹ and the AHRI Directory database. DOE used this publicly-available information to identify ten distinct original equipment manufacturers “OEMs” of the covered VRF multi-split system equipment. In reviewing the ten OEMs, DOE did not identify any companies that met the SBA criteria for a small entity. 87 FR 11335, 11349–11350 (March 1, 2022). DOE requested comment regarding its tentative conclusions that there are no small business OEMs of VRF multi-split systems, that adoption of the prevailing industry standard levels would not result in any significant economic impact, and, accordingly, that the proposed rule would not have significant impacts on a substantial number of small manufacturers. *Id.*

In response, AHRI commented that they are not aware of any small business OEMs of VRF multi-split systems. (AHRI, No. 77 at p. 3) Therefore, DOE concludes that this final rule will not have “a significant impact on a substantial number of small entities” and that preparation of an IRFA/FRFA is not warranted. Additional information about this final rule is addressed elsewhere in this document. DOE has transmitted its certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of VRF multi-split systems must certify to DOE that their equipment complies with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for VRF multi-split systems, 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 VRF multi-split systems. (*See generally* 10 CFR part 429). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This final rule does not make any changes to the certification and recordkeeping requirements for VRF multi-split system manufacturers.

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

Pursuant to the National Environmental Policy Act of 1969 (NEPA), DOE has analyzed this final rule in accordance with NEPA and DOE’s NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this final rule is not a

major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

E. Review Under Executive Order 13132

E.O. 13132, “Federalism,” 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is 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. 6316(a) and (b); 42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, “Civil Justice Reform,” 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. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly

¹⁸ The size standards are listed by NAICS code and industry description and are available at: www.sba.gov/document/support-table-size-standards (Last accessed on Dec. 30, 2022).

¹⁹ DOE’s Compliance Certification Database is available at: www.regulations.doe.gov/ccms (Last accessed Dec. 30, 2022).

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 E.O. 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at: www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.

DOE examined this final rule according to UMRA and its statement of policy and determined that this rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any one year by State, local, and Tribal governments, in

the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

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

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

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 18, 1988), DOE has determined that this final rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, “Improving Implementation of the Information Quality Act” (April 24, 2019), DOE published updated guidelines which are available at: www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf. DOE has reviewed this 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

E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A “significant energy action” is defined

as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action, which sets forth amended energy conservation standards for VRF multi-split systems, is not a significant energy action because it is not a significant regulatory action under Executive Order 12866. Moreover, the standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government’s scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are “influential scientific information,” which the Bulletin defines as “scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.” *Id.* at 70 FR 2667.

In response to OMB’s Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a Peer Review report pertaining to the energy conservation standards

rulemaking analyses.²⁰ Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting December 2021 NAS report.²¹

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this final rule prior to 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).

VII. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business

information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Laboratories, Reporting and recordkeeping requirements, Small businesses.

Signing Authority

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

Signed in Washington, DC, on March 21, 2023.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE amends part 431 of chapter II, subchapter D, of title 10 of

the Code of Federal Regulations, as set forth below:

PART 431—ENERGY CONSERVATION PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

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

■ 2. Section 431.97 is amended by:

■ a. Revising paragraph (f); and

■ b. Redesignating "Table 14" as "Table 15" in paragraph (g).

The revision reads as follows:

§ 431.97 Energy efficiency standards and their compliance dates.

* * * * *

(f)(1) Each variable refrigerant flow air conditioner or heat pump manufactured on or after the compliance date listed in table 13 of this section and prior to January 1, 2024, must meet the applicable minimum energy efficiency standard level(s) set forth in table 13 of this section.

TABLE 13 TO PARAGRAPH (F)(1) TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Cooling capacity	Heating type ¹	Efficiency level	Compliance date: equipment manufactured on and after . . .
VRF Multi-Split Air Conditioners (Air-Cooled).	<65,000 Btu/h	All	13.0 SEER	June 16, 2008.
	≥65,000 Btu/h and <135,000 Btu/h	No Heating or Electric Resistance Heating.	11.2 EER	January 1, 2010.
	≥135,000 Btu/h and <240,000 Btu/h	All Other Types of Heating	11.0 EER	January 1, 2010.
	≥240,000 Btu/h and <760,000 Btu/h	No Heating or Electric Resistance Heating.	11.0 EER	January 1, 2010.
VRF Multi-Split Heat Pumps (Air-Cooled).	≥240,000 Btu/h and <760,000 Btu/h	All Other Types of Heating	10.8 EER	January 1, 2010.
	<65,000 Btu/h	No Heating or Electric Resistance Heating.	10.0 EER	January 1, 2010.
	≥65,000 Btu/h and <135,000 Btu/h	All Other Types of Heating	9.8 EER	January 1, 2010.
	≥135,000 Btu/h and <240,000 Btu/h	All	13.0 SEER, 7.7 HSPF	June 16, 2008.
VRF Multi-Split Heat Pumps (Water-Source).	≥240,000 Btu/h and <760,000 Btu/h	No Heating or Electric Resistance Heating.	11.0 EER, 3.3 COP	January 1, 2010.
	≥135,000 Btu/h and <240,000 Btu/h	All Other Types of Heating	10.8 EER, 3.3 COP	January 1, 2010.
	<17,000 Btu/h	No Heating or Electric Resistance Heating.	10.6 EER, 3.2 COP	January 1, 2010.
	≥17,000 Btu/h and <65,000 Btu/h	All Other Types of Heating	10.4 EER, 3.2 COP	January 1, 2010.
VRF Multi-Split Heat Pumps (Water-Source).	<17,000 Btu/h	No Heating or Electric Resistance Heating.	9.5 EER, 3.2 COP	January 1, 2010.
	≥17,000 Btu/h and <65,000 Btu/h	All	9.3 EER, 3.2 COP	January 1, 2010.
	<17,000 Btu/h	Without Heat Recovery	12.0 EER, 4.2 COP	October 29, 2012.
	≥17,000 Btu/h and <65,000 Btu/h	With Heat Recovery	11.8 EER, 4.2 COP	October 29, 2012.
VRF Multi-Split Heat Pumps (Water-Source).	<17,000 Btu/h	Without Heat Recovery	12.0 EER, 4.2 COP	October 29, 2003.
	≥17,000 Btu/h and <65,000 Btu/h	All	12.0 EER, 4.2 COP	October 29, 2003.

²⁰ The 2007 "Energy Conservation Standards Rulemaking Peer Review Report" is available at: energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0 (Last accessed Oct. 3, 2022).

²¹ The December 2021 NAS report is available at www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.

TABLE 13 TO PARAGRAPH (F)(1) TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Cooling capacity	Heating type ¹	Efficiency level	Compliance date: equipment manufactured on and after . . .
	≥65,000 Btu/h and <135,000 Btu/h	All	12.0 EER, 4.2 COP	October 29, 2003.
	≥135,000 Btu/h and <760,000 Btu/h	Without Heat Recovery	10.0 EER, 3.9 COP	October 29, 2013.
		With Heat Recovery	9.8 EER, 3.9 COP	October 29, 2013.

¹ VRF multi-split heat pumps (air-cooled) with heat recovery fall under the category of “All Other Types of Heating” unless they also have electric resistance heating, in which case it falls under the category for “No Heating or Electric Resistance Heating.”

(2) Each variable refrigerant flow air conditioner or heat pump (except air-cooled systems with cooling capacity less than 65,000 Btu/h) manufactured on or after January 1, 2024, must meet the applicable minimum energy efficiency standard level(s) set forth in table 14 of this section.

TABLE 14 TO PARAGRAPH (F)(2) TO § 431.97—UPDATED MINIMUM EFFICIENCY STANDARDS FOR VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Size category	Heating type	Minimum efficiency
VRF Multi-Split Air Conditioners (Air-Cooled)	≥65,000 and <135,000 Btu/h	All	15.5 IEER.
	≥135,000 and <240,000 Btu/h	All	14.9 IEER.
	≥240,000 Btu/h and <760,000 Btu/h	All	13.9 IEER.
VRF Multi-Split Heat Pumps (Air-Cooled)	≥65,000 and <135,000 Btu/h	Heat Pump without Heat Recovery	14.6 IEER, 3.3 COP.
		Heat Pump with Heat Recovery	14.4 IEER, 3.3 COP.
	≥135,000 and <240,000 Btu/h	Heat Pump without Heat Recovery	13.9 IEER, 3.2 COP.
		Heat Pump with Heat Recovery	13.7 IEER, 3.2 COP.
	≥240,000 Btu/h and <760,000 Btu/h	Heat Pump without Heat Recovery	12.7 IEER, 3.2 COP.
		Heat Pump with Heat Recovery	12.5 IEER, 3.2 COP.
VRF Multi-Split Heat Pumps (Water-Source)	<65,000 Btu/h	Heat Pump without Heat Recovery	16.0 IEER, 4.3 COP.
		Heat Pump with Heat Recovery	15.8 IEER, 4.3 COP.
	≥65,000 and <135,000 Btu/h	Heat Pump without Heat Recovery	16.0 IEER, 4.3 COP.
		Heat Pump with Heat Recovery	15.8 IEER, 4.3 COP.
	≥135,000 and <240,000 Btu/h	Heat Pump without Heat Recovery	14.0 IEER, 4.0 COP.
		Heat Pump with Heat Recovery	13.8 IEER, 4.0 COP.
	≥240,000 Btu/h and <760,000 Btu/h	Heat Pump without Heat Recovery	12.0 IEER, 3.9 COP.
		Heat Pump with Heat Recovery	11.8 IEER, 3.9 COP.

* * * * *

[FR Doc. 2023-06178 Filed 3-29-23; 8:45 a.m.]

BILLING CODE 6450-01-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 230324-0084]

RIN 0694-AJ20

Additions to the Entity List; Amendment To Confirm Basis for Adding Certain Entities to the Entity List Includes Foreign Policy Interest of Protection of Human Rights Worldwide

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

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding eleven entities to the Entity List under the destinations of Burma, the People's Republic of China (China), Nicaragua, and Russia. These eleven entities have been determined by

the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. In this rule, BIS also amends the EAR to explicitly confirm that the foreign policy interest of protecting human rights worldwide is a basis for adding entities to the Entity List. **DATES:** This rule is effective on March 28, 2023.

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

SUPPLEMENTARY INFORMATION:

Background

The Entity List (supplement no. 4 to part 744 of the EAR (15 CFR parts 730 through 774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant

to § 744.11(b). The EAR impose additional license requirements on, and limit the availability of, most license exceptions for exports, reexports, and transfers (in-country) when a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the “License Review Policy” column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that added the entity to the Entity List. The Bureau of Industry and Security (BIS) places entities on the Entity List pursuant to parts 744 (Control Policy: End-User and End-Use Based) and 746 (Embargoes and Other Special Controls) of the EAR.

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

Entity List Decisions

A. Additions to the Entity List

The ERC determined to add two entities, Aviatech and Aviazapchast, under the destination of Russia, and three entities, Miya Win, Myanmar New Era Trading Company, and Suntac Group, under the destination of Burma, to the Entity List for engaging in activities contrary to U.S. foreign policy interests. These additions are being made because Aviatech, Aviazapchast, Miya Win, Myanmar New Era Trading Company, and Suntac Group sell, procure, and service military equipment that enables Burma's military regime to carry out human rights abuses, as well as brutal aerial attacks that have killed and injured civilians. These activities are contrary to the foreign policy interests of the United States under § 744.11(b) of the EAR. For these five entities, BIS imposes a license requirement for all items subject to the EAR and will review license applications under a presumption of denial.

The ERC determined to add the Nicaraguan National Police (NNP) to the Entity List under the destination of Nicaragua for engaging in activities contrary to U.S. foreign policy interests. This addition is being made because the NNP is responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuses in Nicaragua. These activities are contrary to the foreign policy interests of the United States under § 744.11(b) of the EAR. For this entity, BIS imposes a license requirement for all items subject to the EAR and will review license applications under a presumption of denial.

The ERC determined to add the following five entities: Luopu Haishi Dingxin Electronic Technology Co., Ltd., Moyu Haishi Electronic Technology Co., Ltd., Pishan Haishi Yong'an Electronic Technology Co., Ltd., Urumqi Haishi Xin'an Electronic Technology Co., Ltd., and Yutian Haishi Meitian Electronic Technology Co., Ltd., to the Entity List under the destination of China, for engaging in activities contrary to U.S. foreign policy interests. These additions are being made because Luopu Haishi Dingxin Electronic Technology Co., Ltd., Moyu Haishi Electronic Technology Co., Ltd., Pishan Haishi Yong'an Electronic Technology Co., Ltd., Urumqi Haishi Xin'an Electronic Technology Co., Ltd., and Yutian Haishi Meitian Electronic Technology Co., Ltd. have been implicated in human rights violations and abuses in the implementation of China's campaign of repression, mass

arbitrary detention and high-technology surveillance against the Uyghur people and members of other Muslim minority groups in the Xinjiang Uyghur Autonomous Region (XUAR). These activities are contrary to the foreign policy interests of the United States under § 744.11(b) of the EAR. For these five entities, BIS imposes a license requirement for all items subject to the EAR and will review license applications under a presumption of denial.

For the reasons described above, this final rule adds the following eleven entities to the Entity List and includes, where appropriate, aliases:

Burma

- Miya Win International Ltd.,
- Myanmar New Era Trading Company Ltd., and
- Suntac Group.

China

- Luopu Haishi Dingxin Electronic Technology Co., Ltd.,
- Moyu Haishi Electronic Technology Co., Ltd.,
- Pishan Haishi Yong'an Electronic Technology Co., Ltd.,
- Urumqi Haishi Xin'an Electronic Technology Co., Ltd., and
- Yutian Haishi Meitian Electronic Technology Co., Ltd.,

Nicaragua

- Nicaraguan National Police (NNP).

Russia

- Aviatech Supply Ltd., and
- Aviazapchast PLC.

B. Amendment to § 744.11—License Requirements That Apply to Entities Acting or at Significant Risk of Acting Contrary to the National Security or Foreign Policy Interests of the United States: Explicit Inclusion of Protection of Human Rights To Further U.S. Foreign Policy Interests

As part of BIS's ongoing review and update of the EAR to further the foreign policy interest of protecting human rights, consistent with the Export Control Reform Act of 2018 (ECRA), in this rule BIS amends the "Criteria for revising the Entity List" paragraph (b) introductory text and the "is informed" provisions of paragraph (c)(3) (Additional prohibition on persons informed by BIS) of § 744.11 to explicitly confirm a longstanding position that the protection of human rights throughout the world is a foreign policy interest considered in assessing whether the activities of an entity—and those acting on behalf of such entity are contrary to the national security or

foreign policy of the United States. This amendment is consistent with the foreign policy objectives set forth at 50 U.S.C. 4811(2)(D), which include the protection of human rights and promotion of democracy.

BIS is amending this provision to confirm this foreign policy interest and its potential application to the Entity List, similar to the current illustrative list of examples of activities that could lead to an entity's addition to the Entity List, as set forth in § 744.11(b)(1)–(5) of the EAR. This amendment is consistent with the recent decision by the United States Court of Appeals for the District of Columbia Circuit in *Changji Esquel Textile Co. Ltd. v. Raimondo*, 40 F.4th 716 (2022), which affirmed BIS's authority to add parties to the Entity List for human rights-related reasons. In that case, the Court found that "[a]dding human-rights violators to the Entity List falls comfortably within" the scope of 50 U.S.C. 4813(a)(16), which authorizes the Secretary of Commerce to "undertake any other action as is necessary to carry out this subchapter that is not otherwise prohibited by law," and that it did not "discern any clear and mandatory prohibition on adding entities to the [Entity] List for human-rights abuses, particular given the breadth of section 4813(a)(16) and the deference we owe to the Executive Branch in matters of foreign affairs." *Id.* at 723, 725.

Further, and as noted by the Court in the *Esquel* decision (*Id.* at 720), years before the enactment of ECRA, BIS made explicit reference in its Entity List rules to the agency's longstanding authority to take action under the Entity List to address human rights concerns. For example, the background sections of two Entity List rules published in November 2012 and April 2014, respectively, each cite a range of "grounds for inclusion," among them "activities contrary to U.S. national security or foreign policy interests, including terrorism and export control violations involving abuse of human rights" (77 FR 71,097 (Nov. 29, 2012)); 79 FR 21,394 (Apr. 16, 2014)). These rules relied upon authority set forth in the Export Administration Act of 1979, as amended, (50 U.S.C. 4601–4623 (Supp. III 2015)), specifically, Section 6 (Foreign Policy Controls). This provision's Congressional supporters intended that foreign policy controls apply to human rights concerns, including "changing the human rights policy of another country." H.R. Rep. No. 96–200, at 7 (1979) (Comm. Rep.).

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on March 28, 2023, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) before April 27, 2023. Any such items not actually exported, reexported, or transferred (in-country) before midnight, on April 27, 2023, require a license in accordance with this final rule.

Export Control Reform Act of 2018

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

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves an information collection approved by OMB under control number 0694–0088, Simplified Network Application Processing System. BIS does not anticipate a change to the burden hours associated with this collection as a result of this rule. Information regarding the collection, including all supporting materials, can be accessed at <https://www.reginfo.gov/public/do/PRAMain>.

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

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

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

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

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

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

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

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

■ 2. Section 744.11 is amended by revising the last sentence of paragraph (b) introductory text and the first sentence of paragraph (c)(3) to read as follows:

§ 744.11 License Requirements that Apply to Entities Acting or at Significant Risk of Acting Contrary to The National Security or Foreign Policy Interests of the United States.

* * * * *

(b) * * * Paragraphs (b)(1) through (5) of this section provide an illustrative list of activities that could be or represent a significant risk of being contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of the protection of human rights throughout the world.

* * * * *

(c) * * *

(3) The export, reexport, or transfer (in-country) of specified items to a certain party because there is reasonable cause to believe, based on specific and articulable facts, that the entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of the protection of human rights throughout the world, and those acting on behalf of such entity. * * *

■ 3. Supplement no. 4 to part 744 is amended by:

■ a. Under BURMA, adding entries in alphabetical order for “Miya Win International Ltd.,” “Myanmar New Era Trading Company Ltd.,” and “Suntac Group”;

■ b. Under CHINA, PEOPLE'S REPUBLIC OF, adding entries in alphabetical order for “Luopu Haishi Dingxin Electronic Technology Co., Ltd.,” “Moyu Haishi Electronic Technology Co., Ltd.,” “Pishan Haishi Yong'an Electronic Technology Co., Ltd.,” “Urumqi Haishi Xin'an Electronic Technology Co., Ltd.,” and “Yutian Haishi Meitian Electronic Technology Co., Ltd.”;

■ c. Adding in alphabetical order the destination of NICARAGUA under the Country Column, and the entry “Nicaraguan National Police (NNP)”;

■ d. Under RUSSIA, adding entries in alphabetical order for “Aviatech Supply Ltd.” and “Aviazapchast PLC”.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
BURMA	*	*	*	*

Country	Entity	License requirement	License review policy	Federal Register citation
	Miya Win International Ltd., 3rd street, Thit Sarhousing, No.3/401, (8) Ward, South Okkalapatownship, Yangon Region, Burma, 11091; <i>and</i> Kokkineridence Street, No.12/B, Shwe Taungkyar (2) Ward, Bahan Township, Yangon Region, Burma, 11201.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/30/2023.
	*	*	*	*
	Myanmar New Era Trading Company Ltd., Bo Myint Swe Street, No. (B/193), Aung Chan Thar (2) Ward, Thanlyin Township, Yangon Region, Burma, 01–655200.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/30/2023.
	*	*	*	*
	Suntac Group, a.k.a., the following one alias: -Suntac International Trading Co.; <i>and</i> -Suntac Group of Companies. 151 (B) Thiri Mingalar Lane, Mayangon Township, Yangon, Burma.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/30/2023.
	*	*	*	*
CHINA, PEOPLE'S REPUBLIC OF	*	*	*	*
	Luopu Haishi Dingxin Electronic Technology Co., Ltd., a.k.a., the following two aliases: -Luo Pu District HaiShi Ding Xin Electronic Technology Co., Ltd.; <i>and</i> -Luopu County Haishi Dingxin Electronic Technology Co., Ltd. No.8, South Side, National Highway 315, Luopu County Petroleum Company Hotan Prefecture, Xinjiang, 848201 China.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/30/2023.
	*	*	*	*
	Moyu Haishi Electronic Technology Co., Ltd., No. 7, Yinhe North Road, Moyu County Hotan Prefecture, Xinjiang, 848100 China.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/30/2023.
	*	*	*	*
	Pishan Haishi Yong'an Electronic Technology Co., Ltd., a.k.a., the following two aliases: -PiShan Haishi YongAn Electronic Technology Co., Ltd.; <i>and</i> -Pishan Haishi Yongan Electronic Technology Co., Ltd. No. 28, Guma North Road, Pishan County, Hotan Prefecture, Xinjiang, 845150 China.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/30/2023.
	*	*	*	*
	Urumqi Haishi Xin'an Electronic Technology Co., Ltd., Room 5010–5021, Block A, Yingke Plaza, No. 217 Gaoxin Street, Xinshi District, High-tech Industrial Development Zone Wulumuqi, Xinjiang, 830011 China.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/30/2023.
	*	*	*	*
	Yutian Haishi Meitian Electronic Technology Co., Ltd., No. 9, Tuanjie Road, Yutian County Hotan Prefecture, Xinjiang, 848499 China.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/30/2023.
	*	*	*	*
NICARAGUA	Nicaraguan National Police (NNP), 4PJP+GFP, Managua 11132, Nicaragua.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/30/2023.

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
RUSSIA	Aviatech Supply Ltd., a.k.a., the following two aliases: -Aviatech; and -Aviatechexport Ltd. 630123, Aeroport St. Build.1A, 3rd Floor, Novosibirsk, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/30/2023
	Aviazapchast PLC, 48, Ivana Franko Street, Moscow, 121351, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/30/2023.
*	*	*	*	*
*	*	*	*	*

* * * * *

Thea D. Rozman Kendler,
Assistant Secretary for Export
Administration.

[FR Doc. 2023–06663 Filed 3–28–23; 4:15 pm]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

General Rules and Regulations, Securities Exchange Act of 1934

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 17 of the Code of Federal Regulations, Part 240, revised as of April 1, 2022, in section 240.13e–100, reinstate the paragraphs at the end of the section following “Item 16. Exhibits” to read as follows:

§ 240.13e–100 Schedule 13E–3, Transaction statement under section 13(e) of the Securities Exchange Act of 1934 and Rule 13e–3 (§ 240.13e–3) thereunder.

* * * * *

Signature. After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature)

(Name and title)

(Date)

Instruction to Signature: The statement must be signed by the filing person or that person’s authorized representative. If the statement is signed

on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative’s authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See § 240.12b–11 with respect to signature requirements.

[FR Doc. 2023–06701 Filed 3–29–23; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. FDA–2021–N–0310]

RIN 0910–AI32

Medical Devices; Orthopedic Devices; Classification of Spinal Spheres for Use in Intervertebral Fusion Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing a final rule to classify spinal spheres for use in intervertebral fusion procedures (an unclassified, preamendments device) into class III for which FDA is separately requiring the filing of a premarket approval application (PMA). FDA has determined that general controls and special controls together are insufficient to provide reasonable assurance of safety and effectiveness for this device.

DATES: This rule is effective May 1, 2023.

ADDRESSES: For access to the docket to read background documents or

comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this final rule, 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: Constance Soves, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1656, Silver Spring, MD 20993–0002, 301–796–6951, Constance.Soves@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Final Rule

FDA is classifying spinal spheres for use in intervertebral fusion procedures (spinal spheres), which are unclassified, preamendments devices, into class III. A

spinal sphere is a prescription device used to provide stabilization of a spinal segment as an adjunct to fusion. FDA currently regulates these unclassified devices as devices requiring premarket notification, with the product code NVR. The classification of spinal spheres was consistent with the recommendation of the Orthopaedic and Rehabilitation Devices Panel meeting held on December 12, 2013 (the Panel) and our consideration and analysis of public comments received following the publication of the proposed rule. FDA is also, by final order published elsewhere in this issue of the **Federal Register**, requiring the filing of PMAs for such devices.

B. Summary of the Major Provisions of the Final Rule

This rule establishes the identification and classification for spinal spheres as class III devices. In addition, the use of spinal spheres devices is limited to prescription use.

C. Legal Authority

The Agency is issuing this rule under the authority of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 301). Specifically, the relevant authority related to the classification includes section 513(a) through (d) of the FD&C Act (21 U.S.C. 360c(a) through (d)), regarding device classes, classification, and panels, and section 515 (21 U.S.C. 360e), regarding PMAs.

D. Costs and Benefits

This rule classifies spinal spheres for use in intervertebral fusion procedures (an unclassified, preamendments device) into class III for which FDA is separately requiring the filing of a PMA. The costs of the rule include one-time costs associated with reading the rule. FDA is only able to identify the costs of this rule. We estimate that the present value of the costs of the rule are between \$335 and \$16,093, with a primary estimate of \$8,214. Annualizing over a 10-year period at a discount rate of 3 percent, the costs of this rule are estimated to be between \$23 and \$1,082, with a primary estimate of \$552. Annualizing over a 10-year period at a discount rate of 7 percent, the costs of this rule are estimated to be between \$32 and \$1,519, with a primary estimate of \$775.

II. Table of Abbreviations/Commonly Used Acronyms in This Document

TABLE 1—ABBREVIATIONS AND ACRONYMS

Abbreviation or acronym	What it means
510(k)	Premarket Notification.
FDA	Food and Drug Administration.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
PMA	Premarket Approval Application.

III. Background

A. History of This Rulemaking

In the **Federal Register** of December 15, 2021 (86 FR 71191) FDA issued a proposed rule to classify spinal spheres for use in intervertebral fusion procedures (an unclassified, preamendments device) into class III for which FDA requires the filing of a PMA and invited interested persons to comment on the proposed regulation by March 15, 2022. These proposals were consistent with feedback received from the Panel meeting held on December 12, 2013.

B. Summary of the Comments to the Proposed Rule

FDA received two comments on the proposed rule—one from academia and another from an anonymous source. The comments were supportive of the classification of spinal spheres into class III as stated in the proposed rule and no changes were made in response to the comments in the final rule.

IV. Legal Authority

We are issuing this final rule under the authority of the FD&C Act (21 U.S.C. 301). Specifically, the relevant authority related to the classification includes sections 513(a) through (d), regarding device classes, classification, and panels; and section 515, regarding PMAs.

V. Comments on the Proposed Rule and FDA Response

A. Introduction

We received a few comment letters on the proposed rule by the close of the comment period. We received comments from academia and from an anonymous source. We describe and respond to the comments in section V.B of this document.

B. Description of Comments and FDA Response

Both commenters supported FDA's proposed classification of spinal spheres

for use in intervertebral fusion procedures (an unclassified, preamendments device) into class III for which FDA would require the filing of a PMA. The academic commenter agreed with FDA's assessment that this device type poses "a potential unreasonable risk of illness or injury." The commenter described negative patient outcomes as reported in the literature and noted that classification of these devices into class III will safeguard patients undergoing spine surgery from a potentially devastating process and prevent the sale of a risky, unproven device.

Additionally, another commenter stated that strong evidence is necessary to demonstrate the medical benefits of this device type prior to subjecting patients to the risks associated with these devices.

We agree with both commenters supporting classification of spinal spheres to class III because there is a lack of available evidence to determine that general and special controls are sufficient to provide reasonable assurance of its safety and effectiveness, and these devices present an unreasonable risk of illness or injury. As described in the preamble to the proposed rule, the risks to health from spinal spheres include reoperation, pain and loss of function, infection, adverse tissue reaction, soft tissue injury, vertebral endplate injury, pseudarthrosis, implant migration and/or instability, and implant breakage during insertion. FDA is not making any changes in the final rule in response to these comments.

In the final rule, we are revising the section number from § 888.3085 (21 CFR 888.3085) to 21 CFR 888.3083, because a De Novo was previously granted under § 888.3085. No other substantive changes were made to the regulation.

VI. Effective/Compliance Dates

This final rule will become effective 30 days after its date of publication in the **Federal Register**.

After this rule and related order to require the filing of a PMA are effective, spinal spheres for use in intervertebral fusion procedures will be considered adulterated if a PMA is not filed with FDA within 30 months after the classification of the device into class III, and commercial distribution of the product must cease (see section 501(f)(2)(B) of the FD&C Act (21 U.S.C. 351(f)(2)(B))). However, the product may be distributed for investigational use only if the requirements of the investigational device exemptions regulations in 21 CFR part 812 are met.

VII. Economic Analysis of Impacts**A. Introduction**

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant

impact of a rule on small entities. Because the estimated costs imposed on any affected firm are very low, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

B. Summary of Costs and Benefits

This final rule classifies spinal spheres for use in intervertebral fusion procedures (an unclassified, preamendments device) into class III for which FDA is separately issuing an order to require the filing of a PMA.

The costs of the final rule are summarized in table 2; we did not quantify benefits for this rule. The costs of the rule include one-time costs associated with reading and understanding the rule. The present value of the costs of the rule are estimated to be between \$335 and \$16,093, with a primary estimate of \$8,214. The annualized value of the primary estimate of costs over 10 years at a 3 percent discount rate is approximately \$552. The annualized value of the primary estimate of costs over 10 years at a 7 percent discount rate is approximately \$775.

TABLE 2—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized \$millions/year .....	.....	.....	.....	.....	7	10	
					3	10	
Annualized Quantified .....	.....	.....	.....	.....	7	10	
					3	10	
Qualitative .....	.....	.....	.....	.....	.....	.....	
Costs:							
Annualized Monetized \$millions/year	\$0.0008	\$0.00003	\$0.002	2021	7	10	
	0.0006	0.00002	0.001	2021	3	10	
Annualized Quantified .....	.....	.....	.....	.....	7	10	
					3	10	
Qualitative .....	.....	.....	.....	.....	.....	10	
Transfers:							
Federal Annualized Monetized \$millions/year .....	.....	.....	.....	.....	7	10	
					3	10	
From/To	From:			To:			
Other Annualized Monetized \$millions/year .....	.....	.....	.....	.....	7	10	
					3	10	
From/To	From:			To:			

Effects:

State, Local or Tribal Government: None.
 Small Business: Costs would not exceed 0.002 percent of average small firm annual revenues.
 Wages: None.
 Growth: None.

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 1) and at <https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations>.

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively

have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we

conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that would 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. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive order and, consequently, a tribal summary impact statement is not required.

XII. Reference

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at <https://www.regulations.gov>. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA's full analysis of economic impacts is available in the Docket No. FDA-2021-N-0310 for this rule and at <https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations>.

List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 888 is amended as follows:

PART 888—ORTHOPEDIC DEVICES

- 1. The authority citation for part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

- 2. Add § 888.3083 to subpart D to read as follows:

§ 888.3083 Spinal spheres for use in intervertebral fusion procedures.

(a) *Identification.* A spinal sphere device is an implanted, solid, spherical, prescription device manufactured from metallic or polymeric materials. The

device is inserted into the intervertebral body space of the lumbar spine to provide stabilization and to help promote intervertebral body fusion. The device is to be used with bone graft material.

(b) *Classification.* Class III.

Dated: March 17, 2023.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2023-06566 Filed 3-29-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. FDA-2021-N-0309]

Effective Date of Requirement for Premarket Approval Applications for Spinal Spheres for Use in Intervertebral Fusion Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing a final order to require the filing of a premarket approval application (PMA) for spinal spheres for use in intervertebral fusion procedures, an unclassified, preamendments device following the classification of the device into class III.

DATES: This order is effective on May 1, 2023. Anyone who wishes to market spinal spheres for use in intervertebral fusion procedures will need to submit a PMA prior to the last day of the 30th calendar month beginning after the month in which the classification of the device in class III became effective. See section IX for the effective date of the final order. See section VI of this document for more information about submitting a PMA.

FOR FURTHER INFORMATION CONTACT: Constance Soves, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1656, Silver Spring, MD 20993-0002, 301-796-6951, Constance.Soves@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended, establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three

categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513(d)(1) of the FD&C Act, devices that were in commercial distribution before the enactment of the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94-295), on May 28, 1976, (generally referred to as “preamendments devices”), are classified after FDA has: (1) received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

A person may market a preamendments device that has been classified into class III through premarket notification procedures, without submission of a PMA, until FDA issues a final order under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval.

Section 515(f) of the FD&C Act provides an alternative pathway for meeting the premarket approval requirement. Under section 515(f), manufacturers may meet the premarket approval requirement if they file a notice of completion of a product development protocol (PDP) approved under section 515(f)(4) of the FD&C Act and FDA declares the PDP completed under section 515(f)(6)(B) of the FD&C Act. Accordingly, the manufacturer of a preamendments class III device may comply with a call for PMAs by filing a PMA or a notice of completion of a PDP. In practice, however, the option of filing a notice of completion of a PDP has rarely been used. For simplicity, although the PDP option remains available to manufacturers in response to a final order under section 515(b) of the FD&C Act, this document will refer only to the requirement for filing and obtaining approval of a PMA.

Section 515(b)(1) of the FD&C Act sets forth the process for issuing a final order. Specifically, prior to the issuance of a final order requiring premarket approval for a preamendments class III device, the following must occur: (1) publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments from all

affected stakeholders, including patients, payors, and providers.

Section 515(b)(2) of the FD&C Act provides that a proposed order to require premarket approval shall contain: (1) the proposed order; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed order and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(3) of the FD&C Act provides that FDA shall, after the close of the comment period on the proposed order,¹ consideration of any comments received, and a meeting of a device classification panel described in section 513(b) of the FD&C Act, issue a final order to require premarket approval or publish a document terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the FD&C Act, unless the reason for termination is that the device is a banned device under section 516 of the FD&C Act (21 U.S.C. 360f).

A preamendments class III device may be commercially distributed without a PMA until 90 days after FDA issues a final order requiring premarket approval for the device, or 30 months after the classification of the device in class III under section 513 of the FD&C Act becomes effective, whichever is later (section 501(f)(2)(B) of the FD&C Act (21 U.S.C. 351(f)(2)(B))). Elsewhere in this issue of the **Federal Register**, FDA is classifying spinal spheres for use in intervertebral fusion procedures (spinal spheres) to class III. Therefore, a PMA for spinal spheres for use in intervertebral fusion procedures must be filed within the 30-month period because that is the later of the two time periods. If a PMA is not filed in a timely manner for such devices, then the device would be deemed adulterated under section 501(f) of the FD&C Act.

Also, a preamendments device subject to the order process under section

515(b) of the FD&C Act is not required to have an approved investigational device exemption (IDE) (see part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final order requiring the filing of a PMA for the device. At that time, an IDE is required only if a PMA has not been filed. If the manufacturer, importer, or other sponsor of the device submits an IDE application and FDA approves it, the device may be distributed for investigational use. If a PMA is not filed by the later of the two dates, and the device is not distributed for investigational use under an IDE, the device is deemed adulterated within the meaning of section 501(f)(1)(A) of the FD&C Act and subject to enforcement action.

II. Regulatory History of the Devices

After the enactment of the Medical Device Amendments of 1976, FDA undertook an effort to identify and classify all preamendments devices, in accordance with section 513(d) of the FD&C Act. FDA issued a proposed rule for classification of 77 generic types of orthopedic devices in the **Federal Register** of September 4, 1987 (52 FR 33686). However, spinal spheres for use in intervertebral fusion procedures were not identified in this effort. Subsequently and consistent with the FD&C Act, FDA held a panel meeting on December 12, 2013, regarding the classification of spinal sphere devices for use in intervertebral fusion procedures (Ref. 1). Spinal sphere devices, intended for use in fusion procedures, are no longer used due to the widespread adoption of intervertebral body fusion devices ("interbody cages"). Unlike spinal sphere devices, interbody cages generally possess different features to engage with vertebral endplates, allowing them to resist migration and subsidence, and features that allow for the packing of graft material, facilitating bone growth into and through the device.

Elsewhere in this issue of the **Federal Register**, FDA is issuing a rule to classify unclassified, preamendments spinal spheres for use in intervertebral fusion procedures into class III. A PMA, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device. The rule establishes the identification, classification, and regulatory controls for spinal spheres.

Spinal spheres for use in intervertebral fusion procedures are unclassified preamendments devices. These devices have been subject to

premarket review through a 510(k) submission and have been cleared for marketing if FDA considers the device to be substantially equivalent to a legally marketed predicate in accordance with section 513(i) of the FD&C Act. To date, FDA has cleared six spinal sphere devices from four manufacturers.

III. Dates New Requirements Apply

FDA is issuing a rule for classification of spinal spheres, into class III elsewhere in this issue of the **Federal Register**. In accordance with sections 501(f)(2)(B) and 515(b) of the FD&C Act, FDA requires that a PMA be filed with the Agency for spinal sphere devices by the last day of the 30th calendar month beginning after the month in which the classification of the device in class III became effective. An applicant whose product was legally in commercial distribution before May 28, 1976, or whose product has been found to be substantially equivalent to such a product, will be permitted to continue marketing such class III product during FDA's review of the PMA, provided that a PMA is filed in a timely manner. FDA intends to review any PMA for the device within 180 days. FDA cautions that under section 515(d)(1)(B)(i) of the FD&C Act, the Agency may not enter into an agreement to extend the review period for a PMA beyond 180 days, unless the Agency finds that ". . . the continued availability of the device is necessary for the public health."

If a PMA for a class III device is not filed with FDA within 30 months after the classification of the device into class III, commercial distribution of the device must cease. The device may be distributed for investigational use, only if the requirements of the IDE regulations in part 812 are met. The requirements for investigational use of significant risk devices include submitting an IDE application to FDA for review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued under 21 CFR 812.30. FDA, therefore, recommends that IDE applications be submitted to FDA at least 30 days before the date a PMA is required to be filed to avoid interrupting investigations.

IV. Device Subject to This Final Order

A spinal sphere is a prescription device that is an implanted, solid, spherical device manufactured from metallic (e.g., cobalt-chromium-molybdenum) or polymeric (e.g., polyetheretherketone) materials. They are intended to be inserted into the intervertebral disc space of the lumbar

¹ In December 2019, FDA began adding the term "Proposed amendment" to the "ACTION" caption for these documents to indicate that they "amend" the Code of Federal Regulations. This editorial change was made in accordance with the Office of the Federal Register's interpretations of the **Federal Register** Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

spine following a discectomy in order to maintain disc space height and provide postoperative stabilization to the affected spinal segment during fusion procedures. The device is to be used with bone graft material. FDA currently regulates these unclassified devices as devices requiring a 510(k) submission under product code NVR.

V. Public Comments in Response to the Proposed Order

In response to the proposed order, FDA received a total of five comments on the proposed order and they are supportive of the rule to classify spinal spheres to class III and the call for PMA for this device type. The comments and FDA responses to the comments are summarized in this section. Certain comments are grouped together because the subject matter of the comments is similar. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value, importance, or the order in which it was received.

(Comment 1) Commenters supported the requirement for PMA for spinal spheres and had no concern with the time period of 30 months after the effective date for PMA submission.

(Response) FDA agrees. FDA has made no changes to the final order.

(Comment 2) Although supportive of the classification of spinal spheres into class III and the call for PMA, a comment suggested it would "promote efficiency" to apply the proposed rule to all manufacturers of preamendments devices to be classified into class III. Additionally, the commenter requested that the effective date requirement for PMAs for spinal spheres be applied to all manufacturers of preamendments devices to be classified into class III. Finally, the commenter stated that the title of the rule should be revised to reflect a process by which all such preamendments devices would be classified into class III.

(Response) FDA disagrees. FDA notes that under the FD&C Act, it is required to classify preamendments devices and establish the controls necessary to provide reasonable assurance of safety and effectiveness for devices based on each device type's intended use and following the public process established in section 513 of the FD&C Act. Each classification action for a preamendments device requires FDA to engage the appropriate classification panel and make a recommendation for classification specific to the facts and information relevant to the device at issue (see section 513(d) of the FD&C Act). The FD&C Act does not require that FDA classify all devices for class III

at the same time. Nor can FDA apply the PMA requirement to devices that were not discussed at the panel meeting, summarized in the proposed rule, or that are not the subject of the proposed order to require PMAs. With the rule published elsewhere in the **Federal Register**, FDA is completing the classification of spinal spheres, which is the only device subject to the classification. FDA, therefore, cannot include other preamendments devices at this time and, as such, we will not change the title of the rule.

(Comment 3) Commenters stated that FDA should consider extending the amount of time that manufacturers of spinal spheres preamendments devices are required to file PMAs. The commenters expressed concern that 30 months would not be sufficient to collect evidence needed to support safe and effective use of these devices.

(Response) FDA disagrees. The 30-month time period to file for a PMA is dictated by statute (section 501(f)(2)(B) of the FD&C Act). Additionally, as described in the preamble to the proposed classification rule (86 FR 71191), there are safety concerns associated with these devices, including reoperation, pain and loss of function, infection, adverse tissue reaction, soft tissue injury, vertebral endplate injury, pseudarthrosis, implant migration and/or instability, and implant breakage during insertion. Because of these risks in combination with the fact that there are no devices currently marketed, FDA continues to consider the 30-month time period to be appropriate and reasonable.

In the final order, we are revising the section number from § 888.3085 (21 CFR 888.3085) to 21 CFR 888.3083, because a De Novo was previously granted under § 888.3085. No other substantive changes were made to the regulation.

VI. PMA Requirements

A PMA for spinal sphere devices for use in fusion procedures must include the information required by section 515(c)(1) of the FD&C Act. Such a PMA should also include a detailed discussion of the risks, as well as a discussion of the effectiveness of the product for which premarket approval is sought. In addition, a PMA must include all data and information on the following: (1) any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full reports of all non-clinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA must include valid scientific evidence to demonstrate reasonable assurance of the safety and effectiveness of the spinal sphere for its intended use (see § 860.7(c)(2) (21 CFR 860.7(c)(2))). FDA defines valid scientific evidence in § 860.7(c)(2).

To present reasonable assurance of safety and effectiveness of spinal sphere devices, FDA concludes that manufacturers should submit performance testing, including clinical trials of their product, to support PMA approval. Existing published clinical literature relevant to the product may also be leveraged as part of the PMA submission. In addition, FDA strongly encourages manufacturers to meet with the Agency early through the Q-Submission Program for any assistance in preparation of their PMA.

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

While this final order 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 order. The previously approved collections of information are subject to review by the OMB under the PRA. The collections of information in 21 CFR part 814, subparts A through E, have been approved under OMB control number 0910–0231; and the collections of information in part 812 have been approved under OMB control number 0910–0078.

IX. Effective Date

This final order will become effective 30 days after its publication in the **Federal Register**.

X. Reference

The following reference is on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500 and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it also is available electronically at <https://www.regulations.gov>. FDA has verified the website addresses, as of the date this

document publishes in the **Federal Register**, but websites are subject to change over time.

1. Orthopaedic and Rehabilitation Devices Panel—Classification of Spinal Sphere Devices Meeting, December 12, 2013, available at <https://wayback.archive-it.org/7993/20170114044038/http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/OrthopaedicandRehabilitationDevicesPanel/UCM378083.pdf>.

List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 888 is amended as follows:

PART 888—ORTHOPEDIC DEVICES

- 1. The authority citation for part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

- 2. In § 888.3083, add paragraph (c) to read as follows:

§ 888.3083 Spinal spheres for use in intervertebral fusion procedures.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before October 30, 2025, for any spinal sphere for use in intervertebral fusion procedures as identified in paragraph (a) of this section that was in commercial distribution before May 28, 1976, or that has, on or before October 30, 2025, been found to be substantially equivalent to any spinal sphere device for use in intervertebral fusion procedures identified in paragraph (a) of this section, that was in commercial distribution before May 28, 1976. Any other spinal sphere device for use in intervertebral fusion procedures identified in paragraph (a) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: March 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-06565 Filed 3-29-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2023-0259]

Safety Zone; Military Ocean Terminal Concord Safety Zone, Suisun Bay, Military Ocean Terminal Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone in the navigable waters of Suisun Bay, off Concord, CA, in support of explosive on-loading to Military Ocean Terminal Concord (MOTCO) from March 30, 2023, through April 14, 2023. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. The safety zone is open to all persons and vessels for transitory use, but vessel operators desiring to anchor or otherwise loiter within the safety zone must obtain the permission of the Captain of the Port San Francisco or a designated representative. All persons and vessels operating within the safety zone must comply with all directions given to them by the Captain of the Port San Francisco or a designated representative.

DATES: The regulations in 33 CFR 165.1198 will be enforced from 12:01 a.m. on March 30, 2023, until 11:59 p.m. on April 14, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant William Harris, Coast Guard Sector San Francisco, Waterways Management Division, 415-399-7443, SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.1198 for the Military Ocean Terminal Concord, CA (MOTCO) regulated area from 12:01 a.m. on March 30, 2023, until 11:59 p.m. on April 14, 2023, or as announced via marine local broadcasts. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. The regulation for this safety zone, § 165.1198, specifies the location of the safety zone which encompasses the navigable waters in the area between 500 yards of MOTCO Pier 2 in position 38°03'30" N, 122°01'14" W and 3,000 yards of the pier. During the enforcement periods, as reflected in

§ 165.1198(d), if you are the operator of a vessel in the regulated area you must comply with the instructions of the COTP or the designated on-scene patrol personnel. Vessel operators desiring to anchor or otherwise loiter within the safety zone must contact Sector San Francisco Vessel Traffic Service at 415-556-2760 or VHF Channel 14 to obtain permission.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via marine information broadcasts.

Dated: March 23, 2023.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2023-06613 Filed 3-29-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0928]

RIN 1625-AA00

Safety Zones; Coast Guard Sector Ohio Valley Annual and Recurring Safety Zones Update

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending and updating its safety zone regulations for annual events that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This action is necessary to update the current list of recurring safety zones with revisions, additional events, and removal of events that no longer take place in the Sector Ohio Valley. When these safety zones are enforced, certain restrictions are placed on marine traffic in specified areas.

DATES: This rule is effective on March 30, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0928 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer William Miller, Sector Ohio Valley, U.S. Coast Guard;

telephone 502-779-5347, email William.R.Miller@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AOR Area of Responsibility
 COTP Captain of the Port Sector Ohio Valley
 CFR Code of Federal Regulations
 DHS Department of Homeland Security
 E.O. Executive Order
 FR Federal Register
 NPRM Notice of proposed rulemaking
 § Section
 U.S.C. United States Code

II. Background Information and Regulatory History

The Captain of Port Sector Ohio Valley (COTP) is amending 33 CFR 165.801 to update the table of annual fireworks displays and other events in Coast Guard Sector Ohio Valley Area of Responsibility (AOR). These events include air shows, fireworks displays, and other events requiring a safety zone.

On January 23, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled, Safety Zones; Coast Guard Sector Ohio Valley Annual and Recurring Safety Zones Update (86 FR 68948). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to those recurring safety zones. During the comment period that ended on February 22, 2023, no comments were received.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to ensure the safety of the events occurring in March.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Coast Guard is amending and updating the safety zones under 33 CFR part 165 to include the most up to date list of recurring safety zones for events held on or around navigable waters within the Sector Ohio Valley AOR. These events include fireworks displays, air shows, and festivals. The current list in 33 CFR 165.801 requires amending to provide new information on existing safety zones and to include new safety zones expected to recur annually or biannually. Issuing individual regulations for each new safety zone, amendment of existing safety zones creates unnecessary administrative costs and burdens. This rulemaking reduces administrative overhead and provides

the public with notice through publication in the **Federal Register** of the upcoming recurring safety zones. Based on the nature of these events, large numbers of participants and spectators, and event locations, the COTP has determined that the events listed in this rule could pose a risk to participants or waterway users if the normal vessel traffic were to interfere with the events. Possible hazards include risks of injury or death from near or actual contact among participant vessels and spectators or mariners traversing through the regulated area. This purpose of this rule is to ensure the safety of all waterway users, including event participants and spectators, during the scheduled events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published January 23, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule amends and updates part 165 of 33 CFR by revising the current table for Sector Ohio Valley, and by adding eight new recurring safety zones, removing four safety zones, and amending four safety zones as described in the NPRM. Vessels intending to transit the designated waterway through the safety zone will only be allowed to transit the area when the COTP, or designated representative, has deemed it safe to do so or at the completion of the event.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zones. These safety zones are limited in size and duration, and are usually positioned away from high vessel traffic areas.

Moreover, the Coast Guard would issue a Broadcast Notices to Mariners, Local Notices to Mariners, and Marine Safety Information Broadcasts to inform the community of these safety zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

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

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.801, revise and republish Table 1 to read as follows:

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

* * * * *

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
1. 3 days—Third or Fourth weekend in April.	Henderson Breakfast Lions Club Tri-Fest.	Henderson, KY	Ohio River, Miles 802.5–805.5 (Kentucky).
2. 2 days—Third Friday and Saturday in April.	Thunder Over Louisville	Louisville, KY	Ohio River, Mile 597.0–604.0 (Kentucky).
3. Multiple days—April through November.	Pittsburgh Pirates Season Fireworks	Pittsburgh, PA	Allegheny River, Miles 0.2–0.9 (Pennsylvania).
4. Multiple days—April through November.	Cincinnati Reds Season Fireworks	Cincinnati, OH	Ohio River, Miles 470.1–470.4; extending 500 ft. from the State of Ohio shoreline (Ohio).
5. Multiple days—April through November.	Pittsburgh Riverhounds Season Fireworks.	Pittsburgh, PA	Monongahela River, Miles 0.22–0.77 (Pennsylvania).
6. 1 day—First week in May	Belterra Park Gaming Fireworks	Cincinnati, OH	Ohio River, Miles 460.0–462.0 (Ohio).
7. 1 day—One Friday in May prior to Memorial Day.	Live on the Levee Memorial Day Fireworks/City of Charleston.	Charleston, WV	Kanawha River, Mile 58.1–59.1 (West Virginia).
8. 1 day—Saturday before Memorial Day.	Venture Outdoors Festival	Pittsburgh, PA	Allegheny River, Miles 0.0–0.25; Monongahela River, Miles 0.0–0.25 (Pennsylvania).
9. 1 day—Saturday before Memorial Day.	Ironton-Lawrence County Memorial Day Fireworks.	Ironton, OH	Ohio River, Mile 328 (West Virginia).
10. 1 day—First Sunday in June	West Virginia Symphony Orchestra/Symphony Sunday.	Charleston, WV	Kanawha River, Miles 59.5–60.5 (West Virginia).
11. 3 days in June	CMA Festival	Nashville, TN	Cumberland River, Miles 190.7–191.1 extending 100 feet from the left descending bank (Tennessee).
12. 1 day in June	Cumberland River Compact/Nashville Splash Bash.	Nashville, TN	Cumberland River, Miles 189.7–192.1 (Tennessee).
13. 2 days—A weekend in June	Rice's Landing Riverfest	Rice's Landing, PA	Monongahela River, Miles 68.0–68.8 (Pennsylvania).
14. 2 days—Second Friday and Saturday in June.	City of Newport, KY/Italianfest	Newport, KY	Ohio River, Miles 468.6–471.0 (Kentucky and Ohio).
15. 1 day in June	Friends of the Festival, Inc./Riverbend Festival Fireworks.	Chattanooga, TN ...	Tennessee River, Miles 462.7–465.2 (Tennessee).
16. 1 day in June	Junteenth/Black Complex of Louisville	Louisville, KY	Ohio River, Miles 603.5–604.5.
17. 1 day in June	CMA Festival Fireworks	Nashville, TN	Cumberland River 190–191 (Tennessee).
18. 1 day—Second or Third week of June.	TriState Pottery Festival Fireworks	East Liverpool, OH	Ohio River, Miles 42.5–45.0 (Ohio).
19. 3 days—One of the last three weekends in June.	Hadi Shrine/Evansville Freedom Festival Air Show.	Evansville, IN	Ohio River, Miles 790.0–796.0 (Indiana).
20. One weekend in June	Alzheimer's Water Lantern Festival/IC Care.	Wheeling, WV	Ohio River Mile, 90.3–91.8.

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
21. 1 day—Last weekend in June or first weekend in July.	Riverview Park Independence Festival	Louisville, KY	Ohio River, Miles 617.5–620.5 (Kentucky).
22. 1 day—Last weekend in June or First weekend in July.	City of Point Pleasant/Point Pleasant Sternwheel Fireworks.	Point Pleasant, WV	Ohio River, Miles 265.2–266.2, Kanawha River Miles, 0.0–0.5 (West Virginia).
23. 1 day—Last weekend in June or first weekend in July.	City of Aurora/Aurora Firecracker Festival.	Aurora, IN	Ohio River, Mile 496.7; 1,400 ft. radius from the Consolidated Grain Dock located along the State of Indiana shoreline at (Indiana and Kentucky).
24. 1 day—Last week of June or first week of July.	PUSH Beaver County/Beaver County Boom.	Beaver, PA	Ohio River, Miles 25.2–25.6 (Pennsylvania).
25. 1 day—Last weekend in June or first week in July.	Evansville Freedom Celebration/4th of July Fireworks.	Evansville, IN	Ohio River, Miles 790.0–796.0 (Indiana).
26. 1 day—Last week in June or First week in July.	Rising Sun Fireworks	Rising Sun, IN	Ohio River, Miles 506.0–507.0 (Indiana).
27. 1 day—Weekend before the 4th of July.	Kentucky Dam Marine/Kentucky Dam Marina Fireworks.	Gilbertsville, KY	350 foot radius, from the fireworks launch site, on the entrance jetties at Kentucky Dam Marina, on the Tennessee River at Mile Marker 23 (Kentucky).
28. 1 day in July	Clarksville Independence Day Fireworks.	Ashland City, TN ...	Cumberland River, Miles 127–129 (Tennessee).
29. 1 day in July	Gallatin Marina Fireworks	Gallatin, TN	Cumberland River, Miles 236.5–237.5 (Tennessee).
30. 1 day in July	Town of Cumberland City/Lighting up the Cumberland.	Cumberland City, TN.	Cumberland River, Miles 103.0–105.5 (Tennessee).
31. 1 day in July	Chattanooga Presents/Pops on the River.	Chattanooga, TN ...	Tennessee River, Miles 462.7–465.2 (Tennessee).
32. 1 day in July	Randy Boyd/Independence Celebration Fireworks Display.	Knoxville, TN	Tennessee River, Miles 625.0–628.0 (Tennessee).
33. 1 day—July 3rd	Moors Resort and Marina/Kentucky Lake Big Bang.	Gilbertsville, KY	600 foot radius, from the fireworks launch site, on the entrance jetty to Moors Resort and Marina, on the Tennessee River at mile marker 30.5 (Kentucky).
34. 1 day—3rd or 4th of July	City of Paducah, KY	Paducah, KY	Ohio River, Miles 934.0–936.0; Tennessee River, Miles 0.0–1.0 (Kentucky).
35. 1 day—3rd or 4th of July	City of Hickman, KY/Town of Hickman Fireworks.	Hickman, KY	700 foot radius from GPS coordinate 36°34.5035 N, 089°11.919 W, in Hickman Harbor located at mile marker 921.5 on the Lower Mississippi River (Kentucky).
36. 1 day—July 4th	City of Knoxville/Knoxville Festival on the 4th.	Knoxville, TN	Tennessee River, Miles 646.3–648.7 (Tennessee).
37. 1 day in July	Nashville NCVC/Independence Celebration.	Nashville, TN	Cumberland River, Miles 189.7–192.3 (Tennessee).
38. 1 day in July	Shoals Radio Group/Spirit of Freedom Fireworks.	Florence, AL	Tennessee River, Miles 254.5–257.4 (Alabama).
39. 1 day—4th of July (Rain date—July 5th).	Monongahela Area Chamber of Commerce/Monongahela 4th of July Celebration.	Monongahela, PA ..	Monongahela River, Miles 032.0–033.0 (Pennsylvania).
40. 1 day—July 4th	Cities of Cincinnati, OH and Newport, KY/July 4th Fireworks.	Newport, KY	Ohio River, Miles 469.6–470.2 (Kentucky and Ohio).
41. 1 day—July 4th	Wellsburg 4th of July Committee/ Wellsburg 4th of July Freedom Celebration.	Wellsburg, WV	Ohio River, Miles 73.5–74.5 (West Virginia).
42. 1 day—week of July 4th	Wheeling Symphony fireworks	Wheeling, WV	Ohio River, Miles 90–92 (West Virginia).
43. 1 day—First week or weekend in July.	Summer Motions Inc./Summer Motion	Ashland, KY	Ohio River, Miles 322.1–323.1 (Kentucky).
44. 1 day—week of July 4th	Chester Fireworks	Chester, WV	Ohio River, Mile 42.0–44.0 (West Virginia).
45. 1 day—First week of July	Toronto 4th of July Fireworks	Toronto, OH	Ohio River, Mile 58.2–58.8 (Ohio).
46. 1 day—First week of July	Cincinnati Symphony Orchestra	Cincinnati, OH	Ohio River, Miles 460.0–462.0 (Ohio).
47. 1 day—First week or weekend in July.	Gallia County Chamber of Commerce/ Gallipolis River Recreation Festival.	Gallipolis, OH	Ohio River, Miles 269.5–270.5 (Ohio).
48. 1 day—First week or weekend in July.	Kindred Communications/Dawg Dazzle	Huntington, WV	Ohio River, Miles 307.8–308.8 (West Virginia).
49. 1 day—First week or weekend in July.	Greenup City	Greenup, KY	Ohio River, Miles 335.2–336.2 (Kentucky).
50. 1 day—First week or weekend in July.	Middleport Community Association	Middleport, OH	Ohio River, Miles 251.5–252.5 (Ohio).
51. 1 day—First week or weekend in July.	People for the Point Party in the Park ..	South Point, OH	Ohio River, Miles 317–318 (Ohio).
52. 1 day—One of the first two weekends in July.	City of Bellevue, KY/Bellevue Beach Park Concert Fireworks.	Bellevue, KY	Ohio River, Miles 468.2–469.2 (Kentucky & Ohio).
53. 1 day—First Week of July	Pittsburgh 4th of July Celebration	Pittsburgh, PA	Ohio River, Miles 0.0–0.5, Allegheny River, Miles 0.0–0.5, and Monongahela River, Miles 0.0–0.5 (Pennsylvania).
54. 1 day—First week or weekend in July.	City of Charleston/City of Charleston Independence Day Celebration.	Charleston, WV	Kanawha River, Miles 58.1–59.1 (West Virginia).
55. 1 day—First week or weekend in July.	Portsmouth River Days	Portsmouth, OH	Ohio River, Miles 355.5–357.0 (Ohio).
56. 1 day—During the first week of July	Louisville Bats Baseball Club/Louisville Bats Firework Show.	Louisville, KY	Ohio River, Miles 602.0–605.0 (Kentucky).
57. 1 day—During the first week of July	Waterfront Independence Festival/Louisville Orchestra Waterfront 4th.	Louisville, KY	Ohio River, Miles 602.0–605.0 (Kentucky).
58. 1 day—During the first week of July	Celebration of the American Spirit Fireworks/All American 4th of July.	Owensboro, KY	Ohio River, Miles 754.0–760.0 (Kentucky).
59. 1 day—During the first week of July	Riverfront Independence Festival Fireworks.	New Albany, IN	Ohio River, Miles 606.5–609.6 (Indiana).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
60. 1 day in July	Grand Harbor Marina/Grand Harbor Marina July 4th Celebration.	Counce, TN	Tennessee-Tombigbee Waterway, Miles 448.5–451.0 (Tennessee).
61. 1 night in July	Steubenville fireworks	Steubenville, OH ..	Ohio River, Mile 67.5–68.5.
62. 1 day—During the first two weeks of July.	City of Maysville Fireworks	Maysville, KY	Ohio River, Miles 408–409 (Kentucky).
63. 1 day—One of the first two week-ends in July.	Madison Regatta, Inc./Madison Regatta	Madison, IN	Ohio River, Miles 554.0–561.0 (Indiana).
64. 1 day—Third Saturday in July	Pittsburgh Irish Rowing Club/St. Brendan's Cup Currach Regatta.	Pittsburgh, PA	Ohio River, Miles 7.0–9.0 (Pennsylvania).
65. 1 day—Third or fourth week in July	Upper Ohio Valley Italian Heritage Festival/Upper Ohio Valley Italian Heritage Festival Fireworks.	Wheeling, WV	Ohio River, Miles 90.0–90.5 (West Virginia).
66. 1 day—Saturday Third or Fourth full week of July (Rain date—following Sunday).	Oakmont Yacht Club/Oakmont Yacht Club Fireworks.	Oakmont, PA	Allegheny River, Miles 12.0–12.5 (Pennsylvania).
67. 2 days—One weekend in July	Marietta Riverfront Roar Fireworks	Marietta, OH	Ohio River, Miles 171.6–172.6 (Ohio).
68. 1 day—Last weekend in July or first weekend in August.	Fort Armstrong Folk Music Festival	Kittanning, PA	Allegheny River, Mile 45.1–45.5 (Pennsylvania).
69. 1 day in August	Music City Grand Prix Fireworks	Nashville, TN	Cumberland River 190–191 (Tennessee).
70. 1 day in August	Nashville ASAE Fireworks	Nashville, TN	Cumberland River 190–191 (Tennessee).
71. 3 Days in August	Music City Grand Prix	Nashville, TN	Cumberland River 190–191 (Tennessee).
72. 1 day—First week in August	Gliers Goetta Fest LLC	Newport, KY	Ohio River, Miles 469.0–471.0.
73. 1 day—First or second week of August.	Bellaire All-American Days	Bellaire, OH	Ohio River, Miles 93.5–94.5 (Ohio).
74. 1 day—Second full week of August	PA FOB Fireworks Display	Pittsburgh, PA	Allegheny River, Miles 0.8–1.0 (Pennsylvania).
75. 1 day—Second Saturday in August	Guyasuta Days Festival/Borough of Sharpsburg.	Pittsburgh, PA	Allegheny River, Miles 005.5–006.0 (Pennsylvania).
76. 1 day—In the Month of August	Pittsburgh Foundation/Bob O'Connor Cookie Cruise.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5 (Pennsylvania).
77. 1 day—Third week of August	Beaver River Regatta Fireworks	Beaver, PA	Ohio River, Miles 25.2–25.8 (Pennsylvania).
78. 1 day—One weekend in August	Parkersburg Homecoming Festival-Fireworks.	Parkersburg, WV ..	Ohio River, Miles 183.5–185.5 (West Virginia).
79. 1 day—One weekend in August	Ravenswood River Festival	Ravenswood, WV ..	Ohio River, Miles 220–221 (West Virginia).
80. 1 day—The second or third week-end of August.	Green Turtle Bay Resort/Grand Rivers Marina Day.	Grand Rivers, KY ..	420 foot radius, from the fireworks launch site, at the entrance to Green Turtle Bay Resort, on the Cumberland River at mile marker 31.5 (Kentucky).
81. 1 day—last 2 weekends in August/first week of September.	Wheeling Dragon Boat Race	Wheeling, WV	Ohio River, Miles 90.4–91.5 (West Virginia).
82. 1 day—One weekend in the month of August or September.	Owensboro Fireworks and Bridge Lights show.	Owensboro, KY	Ohio River, Miles 756–757 (Kentucky).
83. Sunday, Monday, or Thursday from August through February.	Pittsburgh Steelers Fireworks	Pittsburgh, PA	Allegheny River, Miles 0.0–0.25, Ohio River, Miles 0.0–0.1, Monongahela River, Miles 0.0–0.1 (Pennsylvania).
84. 1 day—One weekend before Labor Day.	Riverfest/Riverfest Inc	Nitro, WV	Kanawha River, Miles 43.1–44.2 (West Virginia).
85. 1 day—The weekend of Labor Day	Newburgh Fireworks Display	Newburgh, IN	Ohio River, Miles 777.3–778.3 (Indiana).
86. 2 days—Sunday before Labor Day and Labor Day.	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH	Ohio River, Miles 469.2–470.5 (Kentucky and Ohio) and Licking River, Miles 0.0–3.0 (Kentucky).
87. 1 day in September	Nashville Symphony/Concert Fireworks	Nashville, TN	Cumberland River, Miles 190.1–192.3 (Tennessee).
88. 1 day—Second weekend in September.	City of Clarksville/Clarksville Riverfest ..	Clarksville, TN	Cumberland River, Miles 124.5–127.0 (Tennessee).
89. 3 days—Second or third week in September.	Wheeling Heritage Port Sternwheel Festival Foundation/Wheeling Heritage Port Sternwheel Festival.	Wheeling, WV	Ohio River, Miles 90.2–90.7 (West Virginia).
90. 1 day—One weekend in September	Ohio River Sternwheel Festival Committee fireworks.	Marietta, OH	Ohio River, Miles 171.5–172.5 (Ohio).
91. 1 day—One weekend in September	Tribute to the River	Point Pleasant, WV	Ohio River, Miles 264.6–265.6 (West Virginia).
92. 1 day—One weekend in September	Aurora Fireworks	Aurora, IN	Ohio River, Mile 496.3–497.3 (Ohio).
93. 1 day—Last two weekends in September.	Cabana on the River	Cincinnati, OH	Ohio River, Mile 483.2–484.2 (Ohio).
94. Multiple days—September through January.	University of Pittsburgh Athletic Department/University of Pittsburgh Fireworks.	Pittsburgh, PA	Ohio River, Miles 0.0–0.1, Monongahela River, Miles 0.0–0.1, Allegheny River, Miles 0.0–0.25 (Pennsylvania).
95. 1 day—First three weeks of October	Leukemia & Lymphoma Society/Light the Night.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).
96. 1 day in October	Leukemia and Lymphoma Society/Light the Night Walk Fireworks.	Nashville, TN	Cumberland River, Miles 189.7–192.1 (Tennessee).
97. 1 day—First two weeks in October	Yeatman's Fireworks	Cincinnati, OH	Ohio River, Miles 469.0–470.5 (Ohio).
98. 1 day—One weekend in October	West Virginia Motor Car Festival	Charleston, WV	Kanawha River, Miles 58–59 (West Virginia).
99. 2 days—One of the last three week-ends in October.	Monster Pumpkin Festival	Pittsburgh, PA	Allegheny River, Mile 0.0–0.25 (Pennsylvania).
100. 1 day—Within two weeks of Thanksgiving.	Pittsburgh Downtown Partnership/Light Up Night.	Pittsburgh, PA	Allegheny River, Miles 0.0–1.0 (Pennsylvania).
101. 1 day—Friday before Thanksgiving	Kittanning Light Up Night Firework Display.	Kittanning, PA	Allegheny River, Miles 44.5–45.5 (Pennsylvania).
102. 1 day—within 2 weeks of Thanksgiving.	Santa Spectacular/Light up Night	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).
103. 1 day—Friday before Thanksgiving	Monongahela Holiday Show	Monongahela, PA ..	Ohio River, Miles 31.5–32.5 (Pennsylvania).
104. 1 day in November	Friends of the Festival/Cheer at the Pier.	Chattanooga, TN ..	Tennessee River, Miles 462.7–465.2 (Tennessee).
105. 1 day—Third week of November ...	Gallipolis in Lights	Gallipolis, OH	Ohio River, Miles 269.2–270 (Ohio).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
106. 1 day—December 31	Pittsburgh Cultural Trust/Highmark First Night Pittsburgh.	Pittsburgh, PA	Allegheny River, Miles 0.5–1.0 (Pennsylvania).
107. 7 days—Scheduled home games	University of Tennessee/UT Football Fireworks.	Knoxville, TN	Tennessee River, Miles 645.6–648.3 (Tennessee).

* * * * *

Dated: March 27, 2023.

H.R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2023–06521 Filed 3–29–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0173]

Security Zone; Lower Mississippi River, Mile Marker 94 to 97 Above Head of Passes, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a security zone for all navigable waters within 400 yards of the Left Descending Bank (LDB) on the Lower Mississippi River (LMR) Mile Marker (MM) 94.4 to MM 95.1, Above Head of Passes (AHP), New Orleans, LA. This security zone is necessary to provide security and protection for visiting personnel during the events related to the French Quarter Festival. Except for Vessel Movement Reporting System Users operating in the Algiers Point VT Special Area, no person or vessel may enter this security zone unless authorized by the Captain of the Port New Orleans (COTP) or a designated representative.

DATES: The regulations in 33 CFR 165.846 will be enforced from 10 a.m. on April 13, 2023, through 10 p.m. on April 16, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander William A. Stewart, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2246, email William.A.Stewart@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a security zone in 33 CFR 165.846 for events related to the French Quarter Festival from 10 a.m. on April 13, 2023, through 10 p.m. on April

16, 2023. This action is being taken to provide security and protection for visiting personnel during the events related to the French Quarter Festival. The security zone will cover all navigable waters within 400 yards of the Left Descending Bank on the Lower Mississippi River from MM 94.4 to MM 95.1 AHP, New Orleans, LA. Except for Vessel Movement Reporting System Users operating in the Algiers Point VT Special Area, no person or vessel may enter this security zone unless authorized by the COTP or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector New Orleans; to include a Federal, State, and/or local officer designated by or assisting the COTP in the enforcement of the security zone. To seek permission to enter, contact the COTP or a designated representative on VHF–FM Channel 12 or 67. Those in the security zone must transit at their slowest speed and comply with all lawful orders or directions given to them by the COTP or a designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs).

Dated: March 22, 2023.

K.K. Denning,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2023–06572 Filed 3–29–23; 8:45 am]

BILLING CODE 9110–04–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

45 CFR Parts 1168 and 1174

RIN 3136–AA46

Civil Penalty Adjustments

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Humanities (NEH) is adjusting the maximum and minimum civil monetary penalties that may be imposed for violations of its New Restrictions on Lobbying and Program Fraud Civil Remedies Act regulations to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This final rule provides the 2023 annual inflation adjustments to the initial “catch-up” adjustments made on April 21, 2020, and August 13, 2021, and reflects all other inflation adjustments made in the interim. This final rule also codifies the statutory formula for inflation adjustments in NEH’s New Restrictions on Lobbying and Program Fraud Civil Remedies Act regulations, so that NEH may publish a Notice in the **Federal Register** indicating the civil monetary penalty adjustment amounts for each regulation in January 2024 and every calendar year thereafter.

DATES: This rule is effective on March 30, 2023.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; gencounsel@neh.gov.

SUPPLEMENTARY INFORMATION:

1. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of

2015 (the Inflation Adjustment Act)¹ directs each Executive agency to make an annual inflation adjustment for each civil monetary penalty provided by law within the jurisdiction of the agency, and to publish notice of each such adjustment in the **Federal Register**. An agency adjusts a civil monetary penalty by increasing the maximum amount of such penalty (or the range of minimum and maximum amounts, as applicable) by the percentage by which the Consumer Price Index for All Urban Consumers (CPI-U) for the month of October preceding the date of adjustment (in this case, October 2022) exceeds the CPI-U for the October one year prior to the October immediately preceding the date of the adjustment (in this case, October 2021), then rounding each amount to the nearest dollar. The formula for the amount of a civil monetary penalty inflation adjustment is prescribed by law, as explained in Office of Management and Budget (OMB) Memorandum M-16-06 (February 24, 2016), and therefore the amount of the adjustment is not subject to the exercise of discretion by the Chair of the National Endowment for the Humanities.

OMB has issued guidance on implementing and calculating the 2023 adjustment under the Inflation Adjustment Act.² Per this guidance, the CPI-U adjustment multiplier for this annual adjustment is 1.07745. In its prior rules, NEH identified two civil monetary penalties which require adjustment pursuant to the Inflation Adjustment Act: a civil monetary penalty that NEH may impose for violation of its New Restrictions on Lobbying regulation (the Lobbying Civil Monetary Penalty)³ and a civil monetary penalty that NEH may impose under its Program Fraud Civil Remedies Act Regulations (the PFCRA Civil Monetary Penalty).⁴ NEH made the initial “catch-up” adjustments to the Lobbying Civil Monetary Penalty when it amended its New Restrictions on Lobbying regulation on April 21, 2020,⁵ and to the PFCRA Civil Monetary Penalty when it adopted its Program Fraud Civil Monetary Penalties Act regulations on August 13, 2021.⁶ With this rule, NEH is adjusting the amount of those civil monetary penalties accordingly.

2. 2023 Adjustments

Two civil monetary penalties in NEH regulations require adjustment in accordance with the Inflation Adjustment Act: (1) the Lobbying Civil Monetary Penalty and (2) the PFCRA Civil Monetary Penalty.

A. Adjustment to Lobbying Civil Monetary Penalty

The Lobbying Civil Monetary Penalty is currently set at a range of a minimum amount of \$22,021 and a maximum amount of \$220,213. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI-U over the relevant time period and rounding to the nearest dollar. Between October 2021 and October 2022, the CPI-U increased by a multiplier of 107.745%. Therefore, the new post-adjustment minimum Lobbying Civil Monetary Penalty is \$23,727 (\$22,021 multiplied by 1.07745) and the maximum Lobbying Civil Monetary Penalty is \$237,268 (\$220,213 multiplied by 1.07745).

Thus, the range for the Lobbying Civil Monetary Penalty shall be between \$23,727 and \$237,268.

B. Adjustment to PFCRA Civil Monetary Penalty

The current maximum PFCRA Civil Monetary Penalty is set at \$12,537. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI-U over the relevant time period and rounding to the nearest dollar. Between October 2021 and October 2022, the CPI-U increased by a multiplier of 107.745%. Therefore, the new, post-adjustment maximum penalty NEH’s PFCRA regulation is \$13,508 (\$12,537 multiplied by 1.07745).

3. Subsequent Annual Adjustments

For subsequent annual adjustments to civil penalty amounts made in accordance with the Inflation Adjustment Act, the amount of the adjustment is based on the percent increase between the CPI-U for the month of October preceding the date of the adjustment and the CPI-U for the October one year prior to the October immediately preceding the date of the adjustment. If there is no increase, there is no adjustment of civil penalties. Therefore, if NEH adjusts penalties in January 2024, the adjustment will be calculated based on the percent change between the CPI-U for October 2023 (the October immediately preceding the date of adjustment) and October 2022 (the October one year prior to October

2023). With this rule, NEH will publish a notice of the amount of these annual inflation adjustments in the **Federal Register** no later than January 15 of each year, starting in 2024.

4. Compliance

Administrative Procedure Act

Pursuant to section 4 of the Inflation Adjustment Act, each Federal agency is required to publish adjustments no later than January 15 each year. In accordance with section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, section 4(b)(2) of the Inflation Adjustment Act provides that each agency shall make the annual inflation adjustments “notwithstanding section 553” of the APA. Consistent with the language of the Inflation Adjustment Act, this rule is not subject to notice and an opportunity for public comment and will be effective on March 30, 2023.

Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review

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

Executive Order 13132, Federalism

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

Executive Order 12988, Civil Justice Reform

This rulemaking meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rulemaking is written in clear language designed to help reduce litigation.

Executive Order 13175, Indian Tribal Governments

Under the criteria in Executive Order 13175, NEH evaluated this rulemaking and determined that it will not have any potential effects on federally recognized Indian Tribes.

Executive Order 12630, Takings

Under the criteria in Executive Order 12630, this rulemaking does not have significant takings implications.

¹ 28 U.S.C. 2461 note.

² Office of Management and Budget (OMB) Memorandum M-23-05 (December 15, 2022).

³ 45 CFR 1168.400(a), (b), (e).

⁴ 45 CFR 1174.3(a), (b).

⁵ 85 FR 22025.

⁶ 86 FR 44626.

Therefore, a takings implication assessment is not required.

Regulatory Flexibility Act of 1980

This rulemaking will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Paperwork Reduction Act of 1995

This rulemaking does not impose an information collection burden under the Paperwork Reduction Act. This action contains no provisions constituting a collection of information pursuant to the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not contain a Federal mandate that will result in 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.

National Environmental Policy Act of 1969

This rulemaking will not have a significant effect on the human environment.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking will not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rulemaking will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices,

significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E-Government Act of 2002

All information about NEH required to be published in the **Federal Register** may be accessed at www.neh.gov. The website www.regulations.gov contains electronic dockets for NEH's rulemakings under the Administrative Procedure Act of 1946.

Plain Writing Act of 2010

To ensure this rule speaks in plain and clear language so that the public can use and understand it, NEH modeled the language of the rule on the Federal Plain Language Guidelines.

List of Subjects in 45 CFR Parts 1168 and 1174

Administrative practice and procedure, Claims, Fraud, Lobbying, Penalties.

For the reasons stated in the preamble, the National Endowment for the Humanities amends 45 CFR chapter XI, subchapter D, as follows:

PART 1168—NEW RESTRICTIONS ON LOBBYING

■ 1. The authority citation for part 1168 continues to read as follows:

Authority: 20 U.S.C. 959(a)(1); 28 U.S.C. 2461 note; 31 U.S.C. 1352.

■ 2. Amend § 1168.400 by:
■ a. In paragraphs (a), (b), and (e):

■ i. Removing “\$20,489” and adding in its place “\$10,000” each place it appears.

■ ii. Removing “\$204,892” and adding in its place “\$100,000” each place it appears.

■ b. Revising paragraph (g).

■ c. Adding paragraph (h).

The revision and addition read as follows:

§ 1168.400 Penalties.

* * * * *

(g)(1) The penalty amounts provided in table 1 to this paragraph (g) apply to violations of this section that occurred prior to December 31, 2023, with each row listing the penalty amounts for violations that occurred in a particular time frame.

(2) For violations of this section that occur on or after January 1, 2024, the maximum penalty range which may be assessed under this section is the larger of:

(i) The amount for the previous calendar year; or

(ii) An amount adjusted for inflation, calculated by multiplying the amount for the previous calendar year by the percentage by which the Consumer Price Index for All Urban Consumers published by the Department of Labor (CPI-U) for the month of October preceding the current calendar year exceeds the CPI-U for the month of October of the calendar year two years prior to the current calendar year, adding that amount to the amount for the previous calendar year, and rounding the total to the nearest dollar.

TABLE 1 TO PARAGRAPH (g)—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS FOR VIOLATIONS PRIOR TO DECEMBER 31, 2023

Date of violation	Penalty range
October 23, 1989–December 31, 2015	\$10,000–\$100,000
January 1, 2016–December 31, 2016	18,936–189,361
January 1, 2017–December 31, 2017	19,246–192,459
January 1, 2018–December 31, 2018	19,639–196,387
January 1, 2019–December 31, 2019	20,134–201,340
January 1, 2020–December 31, 2020	20,489–204,892
January 1, 2021–December 31, 2021	20,731–207,314
January 1, 2022–December 31, 2022	22,021–220,213
January 1, 2023–December 31, 2023	23,727–237,268

(h) Notice of the maximum penalty amounts which may be assessed under paragraphs (a), (b), and (e) of this section for calendar years after 2023 (calculated using the formula in paragraph (g)(2) of this section) will be published by NEH in the **Federal Register** on an annual basis on or before January 15 of each calendar year.

Appendix A to Part 1168 [Amended]

■ 3. Amend appendix A to part 1168 by:

■ a. Removing “\$20,489” and adding in its place “\$10,000” each place it appears.

■ b. Removing “\$204,892” and adding in its place “\$100,000” each place it appears.

PART 1174—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

■ 4. The authority citation for part 1174 continues to read as follows:

Authority: 31 U.S.C. 3801–3812; 5 U.S.C. App. 8G(a)(2).

■ 5. Amend § 1174.3 by:

■ a. In paragraphs (a)(1) introductory text and (b)(1) introductory text,

removing “\$11,803” and adding in its place “\$5,000” each place it appears.

■ b. Revising paragraph (f).

■ c. Adding paragraph (g).

The revision and addition read as follows:

§ 1174.3 Basis for civil penalties and assessments.

* * * * *

(f) *Civil monetary penalty inflation adjustments.* (1) The penalty amounts provided in table 1 to this paragraph (f)

apply to violations of this section that occurred prior to December 31, 2023, with each row listing the penalty amounts for violations that occurred in a particular time frame.

(2) For claims or statements made on or after January 1, 2024, the maximum penalty which may be assessed under this section is the larger of:

(i) The amount for the previous calendar year; or

(ii) An amount adjusted for inflation, calculated by multiplying the amount

for the previous calendar year by the percentage by which the Consumer Price Index for All Urban Consumers published by the Department of Labor (CPI-U) for the month of October preceding the current calendar year exceeds the CPI-U for the month of October of the calendar year two years prior to the current calendar year, adding that amount to the amount for the previous calendar year, and rounding the total to the nearest dollar.

TABLE 1 TO PARAGRAPH (f)—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS FOR VIOLATIONS PRIOR TO DECEMBER 31, 2023

Date of violation	Penalty
October 14, 2008–December 31, 2015	\$5,000
January 1, 2016–December 31, 2016	10,781
January 1, 2017–December 31, 2017	10,957
January 1, 2018–December 31, 2018	11,181
January 1, 2019–December 31, 2019	11,463
January 1, 2020–December 31, 2020	11,665
January 1, 2021–December 31, 2021	11,803
January 1, 2022–December 31, 2022	12,537
January 1, 2023–December 31, 2023	13,508

(g) *Notice of civil monetary penalty inflation adjustments on or after January 1, 2024.* The authority will publish in the **Federal Register** notice of the maximum penalty amount which may be assessed under this section for calendar years after 2023 (calculated using the formula in paragraph (f)(2) of this section) on an annual basis on or before January 15 of each calendar year.

Dated: March 23, 2023.

Jessica Graves,

Legal Administrative Specialist, National Endowment for the Humanities.

[FR Doc. 2023-06414 Filed 3-29-23; 8:45 am]

BILLING CODE 7536-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket Nos. 12–375, 23–62; FCC 23–19; FR ID 133862]

Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Delegations of authority; reaffirmation and modification.

SUMMARY: In this document, the Federal Communications Commission (Commission) reaffirms its prior

delegation of authority to the Wireline Competition Bureau (WCB) and Office of Economics and Analytics (OEA) to modify the Commission’s most recent mandatory data collection as appropriate to implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022. The Commission also reaffirms and updates its prior delegation of authority to WCB and the Consumer and Governmental Affairs Bureau (CGB) to modify the instructions and reporting template for the annual reports required from service providers as appropriate to supplement the information that will be received in this data collection.

DATES: The delegations of authority to WCB, OEA, and CGB are effective March 30, 2023.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Disability Rights Office of the Consumer and Governmental Affairs Bureau, at (202) 418–1264 or via email at michael.scott@fcc.gov, regarding portions of this document relating to communications services for incarcerated people with hearing or speech disabilities, and Stephen Meil, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418–7233 or via email at stephen.meil@fcc.gov, regarding other matters.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Order, document FCC 23–19, released March 17, 2023, in WC Docket Nos. 12–375 and 23–62. The full text of document FCC 23–19 can be accessed

electronically via the FCC’s Electronic Document Management System (EDOCS) website at www.fcc.gov/edocs or via the FCC’s Electronic Comment Filing System (ECFS) website at www.fcc.gov/ecfs. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov, or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Synopsis

1. In this Order, the Commission builds on its efforts to date, bolstered by the new authority Congress has bestowed, and begins the process of implementing the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act) to adopt just and reasonable rates and charges for incarcerated people’s audio and video communications services. Martha Wright-Reed Act, Public Law 117–338, 136 Stat. 6156. This Order continues and expands on the Commission’s ongoing efforts to reform providers’ rates, charges, and practices in connection with interstate and international inmate calling services in WC Docket No. 12–375. At the same time, document FCC 23–19 initiates a new docket, WC Docket No. 23–62, to specifically address implementation of, and changes required by, the provisions of the Martha Wright-Reed Act.

2. In the Order, the Commission reaffirms its prior delegation of data collection authority to WCB and OEA and directs them to update and restructure their most recent data collection as appropriate in light of the requirements of the new statute, so that the Commission may meet its statutory obligation to ensure that the rates and charges for communications services between incarcerated people and their friends and families are just and reasonable. The Commission also reaffirms and updates its prior delegation of authority to WCB and CGB to modify the instructions and reporting template for the annual reports required from service providers as appropriate to supplement the information that will be received in this data collection.

Background

3. *Data Collection.* On January 5, 2023, President Biden signed into law the Martha Wright-Reed Act. The Act was the product of efforts by multiple individuals and committed stakeholders over a number of years to comprehensively address the persistent problem of unreasonably high rates and charges incarcerated people and their families pay for communications services. At its core, the Act removes the statutory limitations that previously prevented the Commission from setting comprehensive and effective just and reasonable rates for incarcerated people's communications services.

4. Specifically, the Martha Wright-Reed Act modifies section 276 of the Communications Act of 1934 (Communications Act) to explicitly enable the Commission to require that rates for incarcerated people's communications services be just and reasonable, irrespective of the "calling device" used. The Act expressly allows the Commission to "use industry-wide average costs," as well as the "average costs of service of a communications service provider" in setting just and reasonable rates. The Martha Wright-Reed Act also requires that the Commission "shall consider," as part of its ratemaking, "costs associated with any safety and security measures necessary to provide" telephone service and advanced communications services. The statute further directs the Commission to promulgate regulations necessary to implement the statutory provisions not earlier than 18 months and not later than 24 months after the date of its enactment.

5. In 2013, the Commission adopted interim interstate rate caps and adopted the Commission's first mandatory data collection regarding inmate calling services (ICS), requiring all providers of

those services to submit data on their underlying costs of service. Rates for Interstate Inmate Calling Services, 78 FR 67956, November 13, 2013. It also adopted an annual reporting obligation requiring providers to provide specific information on their operations, including their rates and ancillary service charges.

6. In 2015, in light of record evidence of continued "egregiously high" rates, the Commission adopted a comprehensive framework for regulating rates and charges for both interstate and intrastate calling services for incarcerated people, re-adopting the interim interstate rate caps it adopted in 2013, and extending them to intrastate calls pending the effectiveness of the new rate caps. The Commission also adopted a Second Mandatory Data Collection to enable it to identify trends in the market and adopt further reforms. Rates for Interstate Inmate Calling Services, 80 FR 79135, December 18, 2015.

7. Subsequently, after seeking comment on additional steps to address unreasonable rates, the Commission released a comprehensive order in which, among other actions, it reformed the treatment of site commissions, set new interim interstate rate caps for prisons and jails with average daily populations of 1,000 or more incarcerated people, and capped international calling rates for the first time. Rates for Interstate Inmate Calling Services, 86 FR 40682, July 28, 2021 (*2021 ICS Order*).

8. In the *2021 ICS Order*, the Commission also sought to improve the data it collected on calling services for incarcerated people as part of its efforts to set reasonable permanent rate caps. It delegated authority to WCB and OEA to establish a Third Mandatory Data Collection to collect uniform cost data to use in setting rate caps that more closely reflect inmate service providers' costs of providing service at correctional facilities. After seeking public comment, in January 2022, WCB and OEA released an Order adopting the data collection. Parties' responses to the Third Mandatory Data Collection were due June 30, 2022, and the Commission affirmatively incorporates those responses into the record in this proceeding.

Order

9. The Martha Wright-Reed Act directs the Commission to promulgate regulations necessary to implement its provisions not earlier than 18 months and not later than 24 months after the date of its enactment, and includes specific language addressing the use of

data in promulgating implementing regulations. The statutory language provides both guidance and directives regarding the use of data, including allowing the Commission to "use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider" in determining just and reasonable rates while ensuring providers are fairly compensated. It further states that the Commission "shall consider costs associated with safety and security measures necessary to provide a service" and "differences in costs" by "small, medium and large facilities or other characteristics." These provisions contemplate and require the collection and analysis of advanced communications services' costs and related data, especially for video communications, among other data that, prior to the Act, the Commission either had no jurisdiction to collect or reason for doing so. The data analysis to implement the statute's mandate that rates and charges be "just and reasonable" must be completed within the required 18 to 24 month timeframe.

10. The Commission's most recent data collection, limited only to inmate telephone services data, took nearly 14 months from the date the Commission delegated authority to WCB and OEA to conduct the data collection on May 24, 2021, to obtaining OMB approval of the data collection instructions and templates, issuing the order directing providers to file their responses and waiting for responses to be filed on June 30, 2022 (a total 402 days for Commission staff to receive responses from the date of delegation of authority). In addition to these steps, WCB and OEA will need time to compile the data into a consistent and meaningful format, analyze the data, and make recommendations for Commission consideration to result in the Act's implementing rules.

11. To ensure that the Commission has the data it needs, in time to meet this statutory mandate, and given the procedurally complex and time-consuming process for data collections generally, the Commission reaffirms its prior delegation of authority to WCB and OEA and directs them to update the prior data collection to encompass, and collect, data on all incarcerated people's communications services from all providers of those services now subject to its expanded authority under the Martha Wright-Reed Act and the Communications Act of 1934, as amended. Specifically, the Commission delegates authority to WCB and OEA to

update and restructure the most recent data collection as appropriate to implement the Martha Wright-Reed Act. The Commission has conducted three data collections related to incarcerated people's calling services in the past ten years. To allow for consistent data reporting, the Commission directed the Commission staff to develop a template for providers to use when submitting their data and to furnish providers with instructions to implement the collection. The Commission also directed staff to review the providers' submissions and delegated to the staff the authority to require providers to submit additional data as necessary to perform its review.

12. The Commission concludes that it must immediately begin the process of updating and restructuring the most recent data collection if it is to meet both its procedural obligations (to consider certain types of data) and its substantive responsibilities (to set just and reasonable rates and charges) under the Martha Wright-Reed Act and the Communications Act. It therefore delegates to WCB and OEA authority to implement any appropriate modifications to this data collection, including with respect to information concerning intrastate services and "any audio or video communications service used by inmates for the purpose of communicating with individuals outside of the correctional institution where the inmate is held, regardless of technology used." The Commission directs WCB and OEA to modify the template and instructions for the collection to the extent appropriate to timely collect such information to cover the additional services and providers now subject to its authority. It also delegates to WCB and OEA the authority to require providers now covered by section 276 of the Communications Act to submit any additional information that they find will assist the Commission in implementing the Martha Wright-Reed Act, including, but not limited to, the authority to request more recent data for additional years not covered by the most recent data collection. Finally, the Commission delegates to WCB and OEA the authority to conduct the requisite Paperwork Reduction Act analysis for any new or modified data collection(s) that they implement pursuant to this Order. Any new or modified requirements that require approval from the Office of Management and Budget (OMB) under the Paperwork Reduction Act shall be effective on the date specified in a notice published in the **Federal Register** announcing OMB's approval.

13. *Annual Reports.* The Commission also reaffirms and updates its prior delegation of authority to WCB and the CGB to revise the instructions and reporting template for the Annual Reports that all service providers are required to file each year. Specifically, it delegates authority to WCB and CGB to modify, supplement, and update those instructions and that template as appropriate to supplement the information the Commission will be receiving in response to the Mandatory Data Collection described above. The Commission finds that this additional information is needed to enable it to understand the rates and ancillary service fees incarcerated people's communications service providers charge for or in connection with the audio and video services now subject to its authority. However, the Commission notes that incarcerated people's communications services providers that do not provide any services classified as inmate calling services under its current rules will not be subject to this reporting requirement. Finally, the Commission delegates to WCB and CGB the authority to conduct the requisite Paperwork Reduction Act analysis for any changes to the Annual Report requirements that are implemented pursuant to this Order.

14. *Effective Date of Delegations of Authority.* The Commission's delegations of authority to WCB, OEA, and CGB will take effect on March 30, 2023. Making the delegations effective at that time will enable WCB, OEA, and CGB to move as expeditiously as practicable toward modifying, supplementing, and updating the Third Mandatory Data Collection to include additional information to facilitate the Commission's ability to fully implement the Martha Wright-Reed Act. Indeed, the Martha Wright-Reed Act directs the Commission to "promulgate any regulations necessary" to establish just and reasonable rates "not later than 24 months" after enactment. Any unnecessary delay in its efforts to collect appropriate information would be inconsistent with, and undermine its ability to meet the deadlines contained in, the Act. Furthermore, given the importance of these areas to incarcerated people, including those with communication disabilities, any unnecessary delay in these initiatives would be inconsistent with the public interest.

15. For purposes of administrative efficiency and to further assist the Commission in its efforts to implement the Martha Wright-Reed Act, the Commission intends to consider the extensive record developed in WC Docket No. 12–375, Rates for Interstate

Inmate Calling Services, and hereby incorporates the record of that proceeding into WC Docket No. 23–62.

Procedural Matters

16. *Congressional Review Act.* The Commission has determined that this Order does not adopt any rules as defined under 5 U.S.C. 551, 804. Accordingly, the Commission is not required to submit, and will not be submitting, a copy of document FCC 23–19 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

17. *Regulatory Flexibility Act.* The Commission has determined that this Order does not adopt any rules as defined under 5 U.S.C. 551. Accordingly, the Commission is not required to issue, and will not be issuing, a final regulatory flexibility analysis concerning the impact of this Order. See 5 U.S.C. 604.

18. *Paperwork Reduction Act.* The Commission has determined that this Order does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

Ordering Clauses

19. Pursuant to the authority contained in sections 1, 2, 4(i)–(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Public Law 117–338, 136 Stat 6156 (2022), the Order in document FCC 23–19 is adopted.

20. Pursuant to the authority contained in sections 1, 2, 4(i)–(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Public Law 117–338, 136 Stat 6156 (2022), and sections 0.201 and 1.103(a) of the Commission's rules, 47 CFR 0.201, 1.103(a), the Order in document FCC 23–19 shall be effective on March 30, 2023.

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2023–06508 Filed 3–29–23; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2020–0114;
FF09E22000 FXES1111090FEDR 234]

RIN 1018–BD04

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Egyptian Tortoise

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are listing the Egyptian tortoise (*Testudo kleinmanni*; syn. *Testudo wernerii*), a terrestrial tortoise from Libya, Egypt, and Israel, as a threatened species with a rule issued under section 4(d) of the Endangered Species Act of 1973 (Act), as amended. The rule issued under section 4(d) of the Act provides measures that are necessary and advisable to provide for the conservation of this species.

DATES: This rule is effective May 1, 2023.

ADDRESSES: This final rule is available on the internet at <https://www.regulations.gov>. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <https://www.regulations.gov> at Docket No. FWS–HQ–ES–2020–0114.

FOR FURTHER INFORMATION CONTACT:

Bridget Fahey, Chief, Division of Conservation and Classification, Ecological Services, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone, 703–358–2171. 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:

Previous Federal Actions

Please refer to the proposed listing rule for the Egyptian tortoise published in the **Federal Register** on November 9, 2021 (86 FR 62122), for a detailed description of previous Federal actions concerning this species.

Summary of Changes From the Proposed Rule

In preparing this final rule, we reviewed and fully considered comments from the public on our November 9, 2021, proposed rule. In this final rule, we make only two minor changes from the proposed rule: (1) We clarify that the listed entity of Egyptian tortoise (*Testudo kleinmanni*) includes the scientific name *Testudo wernerii* as an accepted synonym; and (2) we present new information on the species' population size, based on updated information regarding the size of the population in Israel. Additionally, while the preambular discussion in this final rule is not as detailed as the proposed rule, it is not meant to imply any changes between the proposed and final rules.

Summary of Comments and Recommendations

In the proposed rule published on November 9, 2021 (86 FR 62122), we requested that all interested parties submit written comments on the proposal by January 10, 2022. We also contacted appropriate Federal agencies, scientific experts, organizations, and management authorities from the range countries, as well as other interested parties, and invited them to comment on the proposal. All substantive information we received during the comment period has either been incorporated directly into this final determination or is addressed below.

Peer Reviewer Comments

We received comments from three peer reviewers. We reviewed all comments for substantive issues and new information regarding the information contained in the species status assessment (SSA) report. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final SSA report. Comments from peer reviewers provided general technical corrections and updates on status of the species within the range countries. We incorporated the peer reviewer comments into the final SSA report as appropriate.

Public Comments

Comment (1): Numerous commenters stated that the Act (16 U.S.C. 1531 *et seq.*) was only meant to protect species native to the United States and the Egyptian tortoise should not be listed because it is a foreign species.

Response: The Act does not distinguish between domestic and foreign species as it applies to our responsibilities to determine whether species are endangered or threatened. For example, the broad definitions of “species,” “fish or wildlife,” and “plant” in section 3 of the Act (16 U.S.C. 1532) do not differentiate between species native to the United States, species native to both the United States and one or more other countries, and species not native to the United States. Further, sections 4(b)(1)(A) and 4(b)(1)(B) of the Act (16 U.S.C. 1533(b)(1)(A) and (b)(1)(B)) expressly require the Service to consider efforts by a foreign nation prior to making a listing determination. The Act's section 4(b)(5)(B) (16 U.S.C. 1533(b)(5)(B)) expressly requires the Service, insofar as practical, to provide notice of proposed regulations to and invite comment from foreign nations in which a species is believed to occur. Additionally, the findings and purposes at sections 2(a) and 2(b) of the Act (16 U.S.C. 1531(a) and (b)) also speak to the application of the Act to foreign species, and numerous provisions of the Act and its implementing regulations refer to foreign jurisdictions (e.g., 16 U.S.C. 1537 and 1537a, 50 CFR 424.11(e)). In summary, if a species meets the Act's definition of an endangered or threatened species, the Service must list that species regardless of the country where it is found.

Comment (2): Numerous commenters stated there is no demonstrable benefit to listing the Egyptian tortoise under the Act because it is already protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Response: The purpose of CITES is to ensure that international trade in plants and animals does not threaten their survival in the wild. Protection provided by other laws, such as CITES, was taken into consideration when determining the status of the species. However, simply being protected by these other laws does not preclude the need to list a species under the Act if it meets the Act's definition of an endangered or threatened species. Further, while the Egyptian tortoise is already protected by CITES, additional conservation measures are provided to species listed as endangered or

threatened under the Act, including recognition, requirements for Federal protection, and prohibitions against certain activities with the species. Recognition through listing results in public awareness and may encourage and result in conservation actions by foreign governments, Federal and State governments, private agencies and interest groups, and individuals. For example, listing the Egyptian tortoise under the Act can support the conservation efforts undertaken for the species in Libya, Egypt, and Israel, as well as under the CITES' Appendix-I listing, including research efforts to address conservation needs and funding for range-country conservation.

Listing under the Act can also help ensure that the United States and its citizens do not contribute to the further decline of the Egyptian tortoise through resulting Federal protections and prohibitions on certain activities such as import, export, take, interstate commerce, and foreign commerce (see also Available Conservation Measures, below). For instance, adding a violation under the Act on top of a CITES violation could serve as an additional disincentive for any illegal trade in the species.

Comment (3): One commenter recommended that both *Testudo kleinmanni* and *Testudo weneri* be used as scientific names when listing the species under the Act.

Response: The valid taxonomic status of the Egyptian tortoise is *Testudo kleinmanni*, and *Testudo weneri* is accepted as a junior synonym (ITIS 2022, unpaginated; Attum *et al.* 2007a, p. 399). Thus, in this rule, we clarify that the Egyptian tortoise includes *Testudo weneri* as a synonym for *Testudo kleinmanni*, and we include the synonym *Testudo weneri* in the entry for the species in the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h). All Egyptian tortoises are included in this rule. See the SSA report for a thorough discussion of the taxonomic status of the species (Service 2022, pp. 2–4).

Comment (4): One commenter stated that the species is extinct in Egypt, and another commenter stated that the species occurs in very low numbers in the North Coast of Egypt.

Response: According to the best available information, both of these statements regarding the status of the species in Egypt are inaccurate. The Egyptian tortoise is extant in Egypt as it occurs in a very small population east of the Nile River in and on the periphery of the Zaranik Protected Area in North Sinai, Egypt. Conversely, the best available information indicates that

the Egyptian tortoise is extirpated from the North Coast of Egypt where habitat quality decreases east of Libya, and formerly suitable habitat for the species has become uninhabitable to the degree that no individuals could survive in Egypt west of the Nile River.

Comment (5): Numerous commenters recommended that we issue a rule under section 4(d) of the Act to provide an exception for the commercial trade of Egyptian tortoises within the United States for private individuals because captive-bred tortoises could be used for reintroductions into the wild and aid in the conservation of the species.

Response: We recognize that in well-managed circumstances captive breeding of wildlife can support conservation, for example by producing animals that could be used for reintroductions. However, we are not aware of any captive-breeding programs for the Egyptian tortoise in the United States for this purpose, and thus we are also not aware of captive-breeding programs practicing conservation breeding in a manner that would produce animals suitable for reintroduction. For threatened wildlife, such as the Egyptian tortoise, we may issue permits for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, for economic hardship, for zoological exhibition, for education purposes, and for special purposes consistent with the purposes of the Act.

We may also register persons subject to the jurisdiction of the United States through a captive-bred wildlife (CBW) program if certain established requirements are met under the CBW regulations (see 50 CFR 17.21(g); see also Available Conservation Measures, below). In addition, the 4(d) rule includes an exception for interstate commerce from public institutions to other public institutions, specifically museums, zoological parks, and scientific institutions, meeting the definition of “public” at 50 CFR 10.12. We found that the demand for Egyptian tortoises held at or captive-bred by these types of institutions and sold or otherwise transferred only to other qualifying institutions in the United States is likely not substantial nor is it likely to pose a significant threat to the wild population in the species’ range countries. Only specimens that have been legally imported and their offspring can qualify for this exception; possession of specimens traded contrary to CITES and their offspring is prohibited (16 U.S.C. 1538(c)(1); 50 CFR 23.13).

Comment (6): Numerous commenters stated that tortoises bred in captivity by private individuals in the United States provide a source of genetic diversity for future reintroduction efforts and they produce more captive-bred tortoises than just the Association of Zoos and Aquarium facilities. Therefore, providing an exception for interstate commerce for private individuals will provide a crucial source of genetic diversity for future captive breeding and reintroduction efforts.

Response: The intent of the Act is to recover wild populations in their natural habitat whenever possible. Controlled propagation can support the recovery of some listed species and can be used to reverse declines and return listed species to suitable habitat in the wild. However, controlled propagation is not a substitute for addressing the primary threats to the species. Egyptian tortoises captive-bred in the United States by private individuals are not addressing primary threats to the species nor are the tortoises captive-bred for reintroduction purposes. Additionally, introducing captive-bred individuals increases the risk of releasing pathogens into wild populations. Therefore, captive breeding by private individuals in the United States could not be used to increase the wild population of the species in its range countries. However, well-managed captive-breeding programs by registered public zoos practicing conservation breeding in a manner that would produce animals suitable for reintroduction could be used to reintroduce species into the wild if that became warranted and justified.

Comment (7): Some commenters stated that if the Egyptian tortoise is harder to obtain in the United States because of prohibitions on interstate commerce, prices will increase, which in turn will increase illegal imports of the species into the United States.

Response: Commercial trade of the Egyptian tortoise is already largely prohibited as a result of species’ inclusion in Appendix I of CITES in 1995. CITES Appendix-I species are considered threatened with extinction, and international trade is permitted only under exceptional circumstances, which generally precludes commercial trade. Very few live tortoises or parts have been imported into the United States since then (CITES 2022, unpaginated). No evidence exists that listing the Egyptian tortoise as a threatened species will lead to an increase in illegal imports to the United States. Listing under the Act can also help ensure that the United States and its citizens do not contribute to the

further decline of the Egyptian tortoise through resulting Federal protections and prohibitions on certain activities such as import, export, take, interstate commerce, and foreign commerce (see also Available Conservation Measures, below). For instance, adding a violation under the Act on top of a CITES violation could serve as an additional disincentive for any illegal trade in the species. Therefore, the CITES regulations in place and the additional protections provided by this final rule minimize the risk of illegal imports of wild Egyptian tortoises coming into the United States.

Comment (8): One commenter stated that the Service erred in its significant-portion-of-its-range analysis and advocated that we undertake a new analysis to evaluate whether the populations of the species are endangered in North Coast, Egypt; North Sinai, Egypt; and Israel. The commenter implied that because the populations are small in each of these three areas, the analysis should have led to a determination that the species is endangered in a significant portion of its range.

Response: In this final rule, we expand on the analysis we included in the November 9, 2021, proposed rule (see *Status Throughout a Significant Portion of Its Range*, below) for the three populations the commenter identifies, which we summarize in this response.

The Egyptian tortoise is extirpated from the North Coast of Egypt because of a combination of historical habitat loss and collection for the pet trade; thus, no population occurs in this area. Formerly suitable habitat for the species has become uninhabitable to the degree that no individuals could survive in Egypt west of the Nile River. As outlined in our Final Policy on Interpretation of the Phrase “Significant Portion of Its Range” in the Endangered Species Act’s Definitions of “Endangered Species” and “Threatened Species” (79 FR 37578; July 1, 2014), the term “range” means the general geographical area occupied by the species at the time we make a status determination under section 4 of the Act (see 79 FR 37578, July 1, 2014, pp. 37583–37585). In other words, we interpret “range” in these definitions to be current range, *i.e.*, range at the time of our analysis. Several courts have upheld this interpretation (*Humane Society v. Zinke*, 865 F.3d 585 (D.C. Cir. 2017); *Center for Biological Diversity v. Zinke*, 900 F.3d 1053, 1066–67 (9th Cir. 2018); *Desert Survivors v. Dep’t of the Interior*, F. Supp. 3d 1131 (N.D. Cal. 2018)). Therefore, under our significant portion of its range policy, the North

Coast of Egypt does not merit evaluation as a significant portion of the species’ range because the best available science indicates that the species has been extirpated from the North Coast of Egypt.

The two other Egyptian tortoise populations (in North Sinai, Egypt, and in Israel) discussed by the commenter are extant and are much smaller than the population in Libya; however, the smaller sizes of these two populations do not necessarily equate to the species being in danger of extinction in these portions of its range. The current condition of the populations of the Egyptian tortoise in North Sinai, Egypt and in Israel do not have imminent threats that place the species in danger of extinction. These populations partially occur within protected areas, are protected by those countries’ laws, and are not subject to collection pressure. Even considering the smaller population sizes in North Sinai, Egypt, and in Israel, we considered whether either of these two populations is in danger of extinction and found that they are not, and would not have a different status than the rangewide status of the species. Because we reached a negative answer with respect to the status question for each population, we do not need to evaluate the significance question for that portion of the species’ range.

Supporting Documents

The SSA report for the Egyptian tortoise represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought peer review of the SSA report. We sent the SSA report to five independent peer reviewers who have expertise in the biology, habitat, and threats to the species, and we received three responses. As described above under *Peer Reviewer Comments* in Summary of Comments and Recommendations, we reviewed these responses for substantive issues and new information regarding the information contained in the SSA report, to ensure that our determination is based on scientifically sound data, assumptions, and analyses. The peer reviewers generally concurred with our methods and conclusions, and provided

additional information, clarifications, and suggestions to improve the final SSA report. We incorporated the peer reviewer comments into the final SSA report as appropriate.

I. Final Listing Determination

Background

A thorough review of the taxonomy, life history, distribution and population status, and ecology of the Egyptian tortoise is presented in the SSA report and the proposed rule (Service 2022; available at <https://www.regulations.gov> under Docket No. FWS–HQ–ES–2020–0114). We provide a very brief summary below.

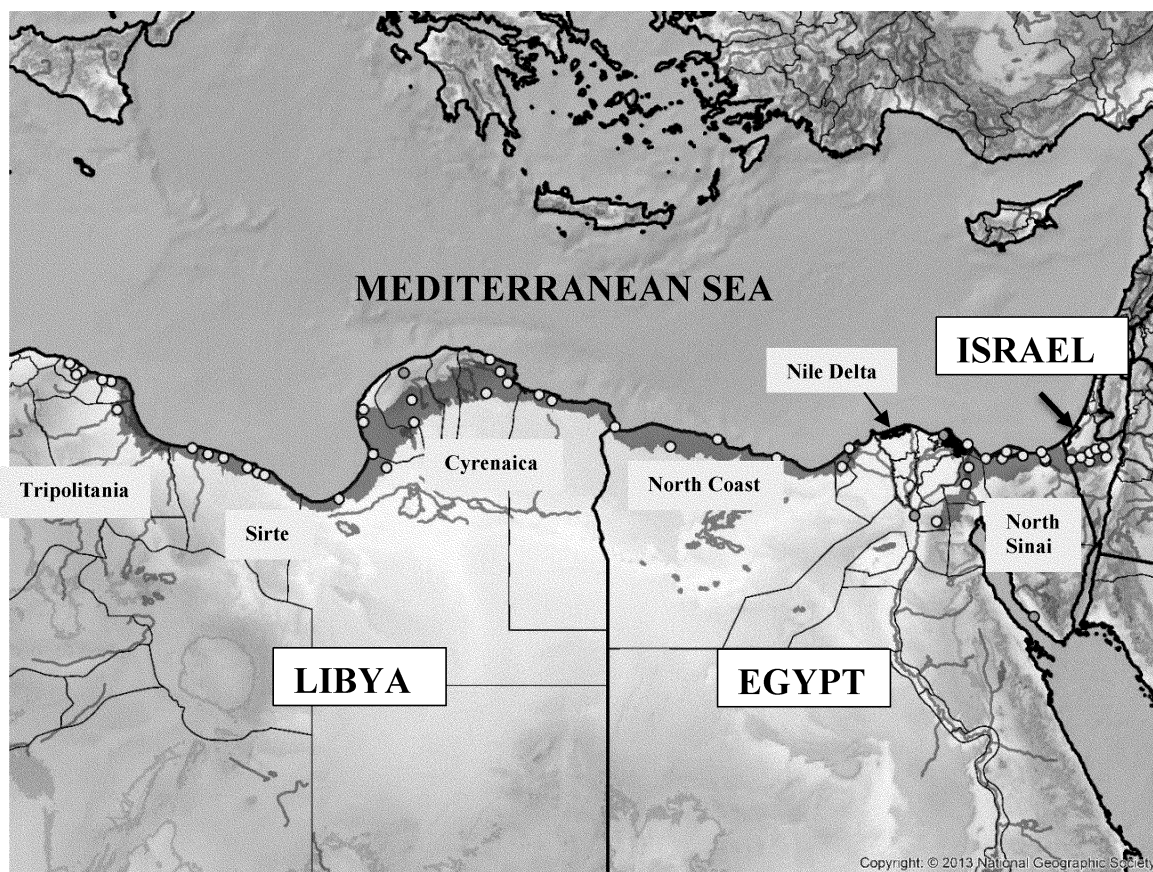
The most distinguishing characteristic of the Egyptian tortoise is its remarkably small size (Highfield and Martin 2014, p. 1). The Egyptian tortoise is the smallest and least-known tortoise species inhabiting the Mediterranean basin (Buskirk 1985, pp. 35, 37), and the second smallest species of tortoise in the world (Woodland Park Zoo 2014, p. 1). Egyptian tortoises are herbivores with low reproductive potential. Males reach maturity at 5 years old, and females take at least 8 years because of physical limitations of laying eggs (Baha El Din 2020, pers. comm.; Attum et al. 2011, p. 10). One generation in the wild is estimated to be about 20 years (Perälä 2006, p. 60; Macale et al. 2009, p. 143), although the average age can be much shorter (Egyptian Environmental Affairs Agency 2009, p. 222).

The Egyptian tortoise is restricted to a narrow coastal zone in North Africa and the western and central Negev Desert in Israel, in the southeast Mediterranean, and has the most restricted range of all tortoises in the Mediterranean Basin (Baha El Din et al. 2003, entire). They need areas of sandy dunes to more solidified sands with plant cover from bushes and small shrubs and annual plants to eat. The species is active during the cooler part of the year and aestivates or experiences prolonged dormancy during the summer when temperatures are high and rainfall and food availability are low.

Historically, the Egyptian tortoise occurred on both sides of the Nile River, distributed along the southeast Mediterranean coast in Libya and Egypt, and in the western and central Negev Desert in Israel. The species currently exists in the three regions in Libya, in five small subpopulations in North Sinai, Egypt, and in the western and central Negev Desert in Israel. The Egyptian tortoise has been extirpated from the North Coast of Egypt and no longer occupies the historical part of its

range from the Libyan border east to the Nile River.

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Figure 1. Distribution of the Egyptian tortoise, from Libya through Israel

The shaded area along the southeastern Mediterranean coast, on the coastline of Libya and Egypt, and into the Western and Central Negev Desert in Israel on the map above reflects the approximate historical range of the species. The Egyptian tortoise has been extirpated from the North Coast of

Egypt; therefore, the species no longer occupies the historical part of the range in Egypt from the Libyan border east to the Nile Delta. The dots are recorded locations from the literature including both historical and current occurrence of the species. (Rhodin 2020, pers. comm; Rhodin et al. 2017).

Over the last three generations (or about 60 years), the Egyptian tortoise population has been reduced by approximately 90 percent throughout its

range, including the extirpation of the species in North Coast, Egypt, which accounted for about 30 percent of the species' historical population (Perälä 2005, p. 894; Perälä 2006, p. 61; Rhodin 2020, pers. comm; Rhodin et al. 2017, p. 154; Baha El Din 1994, p. 6; Baha El Din et al. 2003, p. 651). The best available information indicates that the current population of Egyptian tortoise is approximately 10,000 individuals (see table, below).

TABLE OF ESTIMATES OF THE HISTORICAL AND CURRENT POPULATIONS FOR THE EGYPTIAN TORTOISE

Population name	Historical individuals (estimate of individuals present in the 1950s) ¹	Estimated population in 2005 and 2006 ²	Best estimate in 2022 ³
Libya (Cyrenaica)	22,600	5,000	Libya: At least 7,500 adults, not including non-breeding adults.
Libya (Sirte)	Unknown	Unknown.	
Libya (Tripolitania)	2,500	2,500.	
Egypt (North Coast)	30,500	0 (was previously reintroduced in El Omayed Protected Area).	0.
Egypt (North Sinai) and Israel	45,000	3,150, which are mostly in Israel ..	Israel: Conservative estimate for total population of 2,000–2,500.^

TABLE OF ESTIMATES OF THE HISTORICAL AND CURRENT POPULATIONS FOR THE EGYPTIAN TORTOISE—Continued

Population name	Historical individuals (estimate of individuals present in the 1950s) ¹	Estimated population in 2005 and 2006 ²	Best estimate in 2022 ³
		The population in North Sinai is about 100.	<i>North Sinai</i> : 5 very small sub- populations in one small popu- lation contain a total of 200–250 individuals.
Total Individuals	100,600	10,650	≈ 10,000. ⁴

¹ (Perälä 2005; Perälä 2006).

² (Perälä 2005; Perälä 2006; Schneider and Schneider 2008).

³ (Baha El Din 2020, pers. comm.; Attum 2020, pers. comm.; Israel Nature and Parks Authority (INPA) 2021).

⁴ The current total population may be similar to the population estimated in 2005 and 2006. The current population in Libya is uncertain due to a lack of any recent field surveys.

[^] The current population estimates (2021) in Israel have decreased since last assessed in 2006.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The regulations that are in effect and therefore applicable to this final rule are 50 CFR part 424, as amended by (a) revisions that we issued jointly with the National Marine Fisheries Service in 2019 regarding both the listing, delisting, and reclassification of endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019); and (b) revisions that we issued in 2019 eliminating for species listed as threatened species are September 26, 2019, the Service's general protective regulations that had automatically applied to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an “endangered species” as a species that is in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may either encompass—

together or separately—the source of the action or condition or the action or condition itself.

that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, and then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

Foreseeable Future

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term “foreseeable future” extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

We considered the threats of habitat loss and degradation and collection of the species for the pet trade, along with demographic factors of Egyptian tortoises, and determined that the foreseeable future was approximately 60 years. This timeline for the foreseeable future is based on several factors. The Egyptian tortoise matures slowly, and in the best of conditions has a low reproductive rate. Thus, the species depends on high survival rates and long reproductive lifespans of adults to increase population size (Wilbur and Morin 1988, in Díaz-Paniagua et al. 2001, p. 707). Because of the long generation length (up to 20 years) and slow reproductive rate, demographic responses of the species to the threats that are already ongoing will manifest increasingly over a significant period of time. Additionally, existing studies already document the species' responses to threats over the past three generations or approximately 60 years (Perälä 2005, p. 894; Perälä 2006, p. 61; Rhodin 2020, pers. comm; Rhodin et al. 2017, p. 154; Baha El Din 1994, p. 6; Baha El Din et al. 2003, p. 651). We considered and incorporated the information underlying IUCN's Red List assessment of the species that also takes into account the decline in abundance and range of the species, levels of exploitation, and direct observations by experts (IUCN 2012, unpaginated; Perälä 2005, p. 897; Perälä 2006, p. 65). We found the IUCN's information to be part of the best scientific and commercial information available for this species, and that predictions based on IUCN's information for this species can be reliable over approximately the next 60 years. We also note that IUCN reasonably projects that the species faces a greater-than-80-percent chance of extinction in the wild within the next 60 years.

Therefore, based on the best scientific and commercial data available, we conclude that over a period of 60 years we can make reliable predictions that both the future threats to the species and the species' response to those

threats are likely. "Reliable" does not mean "certain"; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions. Under this approach, because habitat loss and collection for the pet trade are the primary threats to the Egyptian tortoise currently and into the future, and the species has a slow reproductive rate in the best of conditions that depends on high survival rates and long reproductive lifespans of adults to increase population size, we evaluate how far into the future we can make reliable prediction about habitat loss and collection of the species and the responses of Egyptian tortoises to these threats. In addition to the slow, innate reproductive capacity of Egyptian tortoises, we considered and incorporated the information underlying IUCN's Red List assessment of the species that projects that the species faces a greater-than-80-percent chance of extinction in the wild within the next 60 years, taking into account the decline in abundance and range of the species, levels of exploitation, and direct observations by experts. We found the IUCN's information to be part of the best scientific and commercial information available for this species, and that predictions based on IUCN's information for this species can be reliable over approximately the next 60 years. Therefore, we identified 60 years, or 2080, as the foreseeable future for the threats of habitat loss and collection because that is the period over which we can make reliable predictions as to the future condition of Egyptian tortoises.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data available regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS-HQ-ES-2020-0114 on <https://www.regulations.gov>. As noted above, the proposed rule includes more detail than this final rule, but that

does not imply a change between the proposed and final rules.

To assess Egyptian tortoise's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate change). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Egyptian tortoises face similar threats to their viability throughout their range, although the magnitude may vary among Libya, Egypt, and Israel. The primary threats to the species are loss of habitat and collection of the species for the pet trade (Service 2022, pp. 30–39). Because Egyptian tortoises need areas of sandy dunes to more solidified sands

with plant cover from bushes and small shrubs and annual plants to eat, habitat destruction throughout the range of the species caused by human activities is the major factor limiting suitable habitat necessary for the species' survival. Habitat loss may also occur because of changing environmental conditions from climate change. Protected areas, national parks, and nature reserves offer some suitable habitat and protection for the Egyptian tortoise. However, even the habitat in these areas is degraded and is also used for pastoral livestock grazing, which competes with Egyptian tortoise for vegetation (Attum et al. 2007b, entire; Baha El Din et al. 2003, p. 653; Attum et al. 2013, p. 74). Because of the land-use changes and habitat loss, the populations in each country have no connectivity across international borders, including the populations in North Sinai, Egypt, and in Israel that are both on the east side of the Nile and are relatively close in proximity.

Egyptian tortoises were heavily collected from Egypt through much of the first half of the 20th century for sale as pets (Baha El Din 1994, p. 25). The mass collection of the species for the pet trade was recognized as early as 1933 (Flower 1933, p. 746) and continued until the late 1970s, by which time the species' population was extirpated from large parts of the North Coast of Egypt. Currently, the only populations in Egypt are very small and managed by locals in the Zaranik Protected Area in North Sinai. Commercial collection of the species is not currently a factor at this location. However, collection for the pet trade is the biggest threat to the species in Libya, which has the largest remaining population of the species. Collection of Egyptian tortoises is minimal in Israel. Bedouins use shells from dead tortoises and do not collect live tortoises, but some poaching by agricultural workers does occur, which has been reduced through increased outreach and enforcement by Israel Nature and Parks Authority (INPA 2021, p. 4).

Egyptian tortoises are highly sensitive to thermal stress, particularly increased temperature. Therefore, any marginal increase caused by climatic change would be limiting to their survival in the wild (Baha El Din 2020, pers. comm.). This impact has been observed first-hand in captive populations near Cairo, Egypt (only 100 kilometers (62 miles) south of the natural range) (Baha El Din 2020, pers. comm.). Tortoises aestivate under shrubs in the summer when the temperature is highest, food availability is least, and the warming is projected to be the most intense. However, tortoises are more active

during the winter and spring when the mean temperatures are approximately 15 to 25 degrees Celsius (°C) (59 to 77 degrees Fahrenheit (°F)). Temperature is projected to rise moderately during the winter and may not reach levels that are directly detrimental to the tortoise.

The Egyptian tortoise is afforded some protection based on existing regulations in each of the range countries. These regulations have had varying success protecting the species' habitat from destruction and the species from collection for the pet trade. As discussed in further detail below, the inclusion of the Egyptian tortoise in Appendix I of CITES in 1995 was an important action for the conservation of the species, considering the decreasing population numbers and the amount of trade occurring up through the 1980s. However, despite its status in Appendix I of CITES, the best available information indicates that Egyptian tortoises are illegally traded internationally. The collection pressure from this illegal trade continues to harm the species, though at a reduced level that was previously attributed to the legal commercial trade while the species was in Appendix II of CITES (CITES Trade Database 2020; Theile et al. 2004, p. iii; Stengel et al. 2011, pp. 10–11, 19).

Current Conditions

The Egyptian tortoise's viability is influenced by its resiliency, adaptive capacity (representation), and redundancy. Resiliency for the Egyptian tortoise is measured by population size, distribution, and health throughout its range. Population size, quality of habitat where the species occurs (taking into account anthropogenic effects), whether a population is in a protected area, and the collection pressure of a population all influence the resiliency of the Egyptian tortoise. Overall, the Egyptian tortoise has remained relatively stable since 2005 (see table above). The species occurs in fragmented populations with moderate resiliency because there are multiple populations, some of which are partially in protected areas, and ongoing habitat degradation and collection pressure. The Egyptian tortoise resides in representative habitats on both sides of the Nile River, which provides the species with its resource needs and some ecological diversity in habitat west and east of the river. The existence of multiple, resilient populations reduces the likelihood that any single catastrophic event could affect one or more of the populations simultaneously. We have not identified any catastrophic events that would affect the Egyptian tortoise across its entire range.

Future Condition

We projected the resiliency, representation, and redundancy of the Egyptian tortoise under two plausible future scenarios: (1) a status quo scenario in which human-caused impacts and tortoise population responses continue as the current trends indicate; and (2) a reduced-collection scenario in which the collection of Egyptian tortoises for the pet trade from Libya decreases as a result of Libyan authorities enacting regulations that improve enforcement and reduce the collection of the species. However, reducing collection in Libya is uncertain given the ongoing collection of Egyptian tortoises and geopolitical instability in the country. The two scenarios do not include variance or change in the rate of habitat loss caused by human activities such as development, agriculture and grazing, and military activities. The habitat is highly degraded and continues to decline throughout the range of the species. Additionally, we recognize the effects of climate change in the future but do not differentiate between representative concentration pathway (RCP) 4.5 and RCP 8.5 in the future scenarios because we could not distinguish between RCPs 4.5 and 8.5 at which temperature or timeframe the Egyptian tortoise would show signs of stress. Habitat loss and collection for the pet trade will have a more immediate and pronounced effect on the species and its habitat suitability. Therefore, we focused the future condition on habitat loss and collection pressure because of human activities.

Scenario 1

We project rangewide habitat degradation into the future under Scenario 1, and collection pressure continuing on the same trajectory as current conditions. Human population and development pressure are higher in North Coast, Egypt, and in Israel than in Libya and North Sinai, Egypt. Thus, we would not expect as much habitat loss from development in Libya and North Sinai. However, because collection pressure is higher in Libya, we anticipate that the population in Libya will be substantially reduced. Populations in Libya (one population across three regions), North Sinai, Egypt (one small population made up of five very small subpopulations), and Israel (one population in the Negev Desert) would decrease and become more fragmented, and we conclude that the resiliency of the species will decrease from moderate to low-to-moderate within the foreseeable future because of ongoing habitat degradation and

collection pressure. A decreasing population of Egyptian tortoise residing in increasingly degraded habitat reduces the species' ability to sustain populations in the event of stochastic variation. We project that the population in Libya would be substantially reduced because of ongoing collection, but would still occur within the three regions in Libya at much smaller population sizes. The tortoise populations in North Sinai, Egypt, and the Negev Desert in Israel would remain, but would decrease. Therefore, the species will continue to occupy the same areas as it currently occupies. The Egyptian tortoise would occur in each country, west and east of the Nile River, and maintain some ecological diversity between the populations. Thus, representation would likely be similar to current conditions. However, representative habitat types in which the species occurs would continue to be much fewer than they were historically, and would continue to decline. We have not identified any catastrophic events that would affect Egyptian tortoises across its entire range. Therefore, the species would have redundancy to withstand catastrophic events.

Scenario 2

Similar to Scenario 1, we project that rangewide habitat degradation will continue in the future, but under Scenario 2, the collection pressure in Libya will be reduced. Libyan authorities and local academics had

been seeking to end collection and exportation of Egyptian tortoise from Libya. However, we acknowledge that with the ongoing collection of the species and geopolitical instability in Libya, implementing conservation measures to reduce collection for the pet trade is uncertain. Nonetheless, if collection is reduced, the population in Libya would not decline at the current trajectory, and at a minimum, the Libyan population of Egyptian tortoises would decline at a slower rate compared to current conditions. However, this population would have low-to-moderate resiliency within the foreseeable future because the habitat will continue to be degraded, the population is not in a protected area, and even if conservation measures are implemented, we conclude some collection for the pet trade will continue. The populations in North Sinai, Egypt, and the Negev Desert in Israel would experience a decrease in resiliency in the foreseeable future as described under Scenario 1.

Because the populations in Libya, in North Sinai, Egypt, and in Israel would remain, the Egyptian tortoise would occur in each country, west and east of the Nile River, and represent the same ecological diversity and habitats between the populations as current conditions, although at decreasing levels in each population. Similar to Scenario 1, the species would occupy the same areas as it currently occupies, which are fewer than the species historically occupied, and suitable

habitat will continue to decline. Because we have not identified any catastrophic event that would affect the species throughout its range, the species will have redundancy to withstand catastrophic events.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Table of Abundance, Habitat Quality, Presence of Protected Areas, and Collection Pressure of Egyptian Tortoises Comparing the Current Condition to Future Conditions Under Scenarios 1 and 2

		Factors Considered			
		Abundance	Habitat Quality	Collection Pressure	Protected Areas
Current Conditions		Egyptian tortoise is present in three populations in Libya and one population in Egypt and in Israel	Highly degraded and fragmented with few annual plants and shrubs available	Collection of the species occurs in Libya. Populations in Egypt and Israel are not collected.	No protected areas in Libya. Populations in Egypt and Israel are partially in protected areas.
Future Condition Scenarios	Scenario 1: Status Quo	Egyptian tortoise is present, but substantially reduced in Libya. The species is present in Egypt and Israel and is likely declining	Highly degraded and fragmented with few annual plants and shrubs available	Collection of the species continues in Libya on the same trajectory. Populations in Egypt and Israel are not collected	No additional conservation programs to manage habitat or reintroduce the species in protected areas
	Scenario 2: Reduced Collection from Libya	Egyptian tortoise is present in its existing populations in Libya, Egypt, and Israel and declining, but declining slower in Libya because of reduced collection	Highly degraded and fragmented with few annual plants and shrubs available	Reduced collection of the species in Libya and export to other countries. Populations in Egypt and Israel are not collected	No additional conservation programs to manage habitat or reintroduce the species in protected areas

Conservation Efforts and Regulatory Mechanisms

The Egyptian tortoise is afforded some protection based on existing regulations in each of the range countries. However, these regulations have had varying success protecting the species' habitat from destruction and the species from collection for the pet trade. Protected areas, national parks, and nature reserves offer some suitable habitat and protection for the Egyptian tortoise, although habitat in protected areas is degraded and is subject to livestock grazing. Additionally, lax enforcement in these areas may provide opportunities for tortoise poaching and smuggling.

In Egypt it is illegal to collect, possess, or sell protected species or wild animals, dead or alive (Law No. 4 of 1994, Ministry of State for Environmental Affairs 2022, unpaginated). Although enforcement is sporadic, it is increasing, and implementation and screening at airports for species listed under CITES has resulted in confiscation of some Egyptian tortoises intended for the illegal pet trade (Baha El Din et al. 2003, p. 653). Zaranik Protected Area in North Sinai, Egypt, contains Egyptian tortoises, and local Bedouins manage the population and protect the species from habitat degradation and collection. A program operated by Bedouin women contributes to raising awareness for the species through the production of handicrafts with tortoise motifs (Baha El Din et al. 2003, p. 654; Attum et al. 2007b, p. 399).

In Libya, the Egyptian tortoise is covered by a resolution from the Minister of Agriculture in favor of their protection and to prevent trading and export (Khalifa in litt., to IUCN Species Survival Commission (SSC) Trade Specialist Group 1993, in CITES uplisting proposal 1995, p. 25). However, we have no information to indicate the resolution is enforceable. Additionally, the lists of species protected in Libya do not include the Egyptian tortoise (Baha El Din 2002, p. 2; McGrath 2011, unpaginated). Accordingly, domestic regulatory mechanisms in Libya are either nonexistent or potentially lacking enforcement authority.

In Israel, the Wildlife Protection Law (enacted in 1955 and amended in 1999) has proved to be an effective instrument in the protection of wildlife. All species of wild animals anywhere in Israel are completely protected, except for designated pest species and declared game species (Israel Ministry of Foreign Affairs (IMFA) 1997, unpaginated;

Wildlife Protection Law 5715–1955). The nature reserve Holot Agur in Israel was established in 2010, and covers approximately 176 square kilometers (km²) (68 square miles (mi²)) of the Holot Agur sands area in the western Negev Desert, which overlaps about one-fifth of the best known and studied population of Egyptian tortoises in Israel (Buskirk 1993, unpaginated).

Libya, Egypt, and Israel are all Parties to CITES, and the Egyptian tortoise is a CITES-protected species. The Egyptian tortoise was included in Appendix II of CITES in 1975, under the genus-level listing of *Testudo* spp., and the species subsequently was transferred to Appendix I on February 16, 1995. Species included in Appendix I receive the highest level of protection under CITES (CITES Article II, 1. and 4.; CITES Article III; 50 CFR part 23). Including the species in Appendix I of CITES was an important action for the conservation of the species, considering the decreasing population numbers and the level of trade occurring through the 1980s. However, despite the species' status in Appendix I of CITES, the best available information indicates that Egyptian tortoises are illegally traded internationally. The collection pressure continues to harm the species, although at a reduced level compared to the collection pressure while the species was in Appendix II (CITES Trade Database 2020; Theile et al. 2004, p. iii; Stengel et al. 2011, pp. 10–11, 19). International trade for Appendix-I species is permitted only under exceptional circumstances, and trade primarily for commercial purposes is prohibited, with limited exceptions for qualifying specimens bred in captivity for commercial purposes by CITES-registered facilities and pre-Convention specimens (CITES Article II, 1. and 4.; CITES Article III; CITES Article VII, 2. and 4.; 50 CFR part 23). There are currently no CITES-registered breeding facilities for the species.

Determination of Egyptian Tortoise's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an "endangered species" as a species in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of

endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we found that habitat loss and degradation continue throughout the species' range because of a suite of ongoing human activities, and are the major factor limiting the availability of suitable habitat (Factor A). Collection of the species is ongoing and a significant threat in Libya, where the largest remaining population of Egyptian tortoise occurs (Factor B). Collection for the pet trade is not known to be a major factor in North Sinai, Egypt, or in Israel, although minimal poaching likely occurs in Israel. However, the potential exists that commercial collectors may target Egyptian tortoises in Zaranik Protected Area in the future. The Egyptian tortoise is afforded some protection in Egypt and Israel based on existing regulations, which have had minimal success protecting the species and its habitat. No enforceable conservation measures for the species are in place in Libya. The species' inclusion in Appendix I of CITES in 1995 substantially reduced the international trade in wild specimens that was occurring primarily for commercial purposes, although some illegal commercial trade continues despite the species' status in Appendix I.

The total Egyptian tortoise population is estimated to be nominally fewer in 2022 than it was in 2005–2006. Despite losses in numbers and habitat, approximately 10,000 Egyptian tortoises occur within 7,929–15,857 km² (3,061–6,122 mi²) of suitable habitat across the species' range in the Mediterranean coastal area of Libya; North Sinai, Egypt; and the Negev Desert in Israel (Perälä 2005, p. 894; Perälä 2006, p. 61; Rhodin 2020, pers. comm.).

Based on the best available information, the population over the last 15 years may be steady but appears to have slightly declined. This appearance of a steady population over the past 15 years could be a result of a combination of factors. It could be uncertainty in the data. It could reflect the possibility that

more tortoises exist in Libya than previously understood. It could also be because collection for the pet trade briefly slowed at the start of the uprising against the Libyan Government in 2011. In any case, the species occurs in multiple populations, with a total population that has drastically declined from historical levels. The species retains representation across most of its historical range even though it has been extirpated from North Coast of Egypt. The two populations east of the Nile River in North Sinai, Egypt, and the Negev Desert, Israel, are partially in protected areas with varying levels of enforcement. We also considered whether the future species' response to past, currently occurring, or imminent future threats would significantly change the species' current viability, and concluded it would not. Therefore, after assessing the best available information, we conclude the Egyptian tortoise has sufficient resiliency, redundancy, and representation that with its current numbers and distribution it is not in danger of extinction throughout all of its range.

We next considered whether the Egyptian tortoise is likely to become in danger of extinction throughout all of its range within the foreseeable future, which we determined for the species to be three generations of the species (approximately 60 years). Based on projected increases in the human population along the Mediterranean coast within the range of the species, we expect both the species' population and habitat to decline into the future because of ongoing habitat degradation and loss, and collection for the pet trade. Additionally, habitat degradation and loss are likely to be amplified by synergistic effects associated with the consequences of climate change. Projections for the Mediterranean region reveal warming in all seasons and reduced precipitation throughout the year. Egyptian tortoises are highly sensitive to thermal stress, particularly increased temperature. Therefore, any marginal increase resulting from climatic change, combined with the loss of habitat (*i.e.*, shrubs needed for thermal buffering), would limit the species' ability to survive in the wild.

We project that the multiple threats to the species and its habitat will cause the size of the population and the amount of suitable habitat for the species to decline, thereby decreasing the resilience of the population into the future. Existing regulatory measures have had minimal success conserving the species' habitat and but have reduced the number of tortoises collected for the pet trade. Although the

species is not in danger of extinction throughout all of its range now, the factors identified above continue to negatively affect the Egyptian tortoise and its habitat such that it is likely to become in danger of extinction within the foreseeable future throughout all of its range. Based on the best available scientific studies and information assessing land-use trends, collection pressure, adequacy of law enforcement, temperature and rainfall projections because of climate change, and predictions about how those threats may affect the Egyptian tortoise, we conclude that the Egyptian tortoise will lack sufficient resiliency, redundancy, and representation for its continued existence to be secure within the foreseeable future. We, therefore, determine that the Egyptian tortoise is likely to be in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity v. Everson*, 2020 WL 437289 (D.D.C. 2020) (*Everson*), vacated the aspect of the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (Final Policy; 79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the "significance" question or the "status" question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson*, we consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.*, endangered). In undertaking this analysis for the

Egyptian tortoise, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered. We examined whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We considered the following threats: habitat degradation and loss, collection for the pet trade, and small population size, including cumulative effects. The suite of activities, such as urban development, agriculture, grazing, and military exercises, that has caused, and continues to cause, the loss and degradation of habitat occurs across all populations throughout the species' range. The available data do not suggest that these threats to the habitat are concentrated in any area at a biologically meaningful scale. Therefore, the threats causing habitat loss do not themselves result in the species being in danger of extinction in any portion of its range.

Collection for the pet trade is the most significant threat to the species in Libya and is currently concentrated in this part of the species' range. Collection has historically been a significant threat across Egypt, particularly in the North Coast, which combined with habitat loss led to the extirpation of the species from this part of its range. Collection for the pet trade is not known to be a factor in North Sinai, Egypt, or in Israel, although minimal poaching occurs in Israel and there is concern that commercial collectors will target Egyptian tortoises in Zaranik Protected Area in the future. Libya contains the majority of the population of Egyptian tortoises. While the threat of collection for the pet trade is concentrated in Libya, which is the only population on the west side of the Nile River, the effect of collection does not place the species in danger of extinction in this portion of its range, even in combination with other threats to the species such as habitat loss. In other words, the concentrated collection pressure in Libya is not severe enough to make the species currently endangered in this portion of its range given its size and distribution throughout its historical range in this portion.

We also considered whether the populations of Egyptian tortoises in North Sinai, Egypt, and in the Negev Desert in Israel may each be more vulnerable because of their smaller population sizes. These two populations are smaller than historical estimates and are the only populations east of the Nile

River, including the only remaining population in Egypt that historically occurred along a much larger area of coastline in Egypt. However, the smaller size of the populations themselves do not equate to the populations being in danger of extinction.

Each population may be more vulnerable to a loss of genetic diversity and catastrophic events because of their small sizes; however, we have no information that the species is affected by inbreeding depression, and we are not aware of catastrophic events that would make the species currently in danger of extinction in these portions of its range. While the populations in North Sinai, Egypt, and in Israel are smaller, particularly the population in North Sinai, the populations do not currently face collection pressure. Additionally, because of awareness and management of the species in these two populations, and protections provided to the species and its habitat through existing laws and designation of protected areas that overlap parts of where these populations occur, the populations in North Sinai, Egypt, and in Israel are not currently in danger of extinction in these portions of the species' range.

We determined there is no portion of the species' range where it may be in danger of extinction, and because we reached a negative answer with respect to the "status" question, we do not need to evaluate the "significance" question for that portion of the species' range. Our approach to this analysis is consistent with the courts' holdings in *Desert Survivors v. Dep't of the Interior*, F. Supp. 3d 1131 (N.D. Cal. 2018), and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available scientific and commercial information indicates that the Egyptian tortoise meets the Act's definition of a threatened species. Therefore, we list the Egyptian tortoise as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

The purposes of the Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in the Act. There are a number of steps available to

advance the conservation of species listed as endangered or threatened species under the Act. As explained further below, these conservation measures include: (1) recognition, (2) recovery actions, (3) requirements for Federal protection, (4) financial assistance for conservation programs, and (5) prohibitions against certain practices.

First, recognition through listing results in public awareness, as well as in conservation actions by Federal, State, Tribal, and local agencies; foreign governments; private organizations; and individuals. Second, the Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species.

Third, our regulations at 50 CFR part 402 implement the interagency cooperation provisions found under section 7 of the Act. Under section 7(a)(1) of the Act, Federal agencies are to use, in consultation with and with the assistance of the Service, their authorities in furtherance of the purposes of the Act. Section 7(a)(2) of the Act, as amended, requires Federal agencies to ensure, in consultation with the Service, that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of its critical habitat.

A Federal "action" that is subject to the consultation provisions of section 7(a)(2) of the Act is defined in our implementing regulations at 50 CFR 402.02 as all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. With respect to this species, there are no actions known to require consultation under section 7(a)(2) of the Act. Given the regulatory definition of "action," which clarifies that it applies to activities or program "in the United States or upon the high seas," the Egyptian tortoise is unlikely to be the subject of section 7 consultations, because the entire life cycle of the species occurs in terrestrial areas outside of the United States unlikely to be affected by U.S. Federal actions. Additionally, no critical habitat will be designated for this species because, under 50 CFR 424.12(g), we will not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States.

Fourth, section 8(a) of the Act (16 U.S.C. 1537(a)) authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the

Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act (16 U.S.C. 1537(b) and (c)) authorize the Secretary to encourage conservation programs for foreign listed species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Fifth, the Act puts in place prohibitions against particular actions. When a species is listed as endangered, certain actions are prohibited under section 9 of the Act and are implemented through our regulations in 50 CFR 17.21. For endangered wildlife, these include prohibitions under section 9(a)(1) of the Act on import; export; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; and sale or offer for sale in interstate or foreign commerce of any endangered species. It is also illegal to take within the United States or on the high seas; or to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered species that have been taken in violation of the Act. It is unlawful to attempt to commit, to solicit another to commit or to cause to be committed, any of these acts. Exceptions to the prohibitions for endangered species may be granted in accordance with section 10 of the Act and our regulations at 50 CFR 17.22.

The Act does not specify particular prohibitions and exceptions to those prohibitions for threatened species. Instead, under section 4(d) of the Act, the Secretary, as well as the Secretary of Commerce depending on the species, are given the discretion to issue such regulations as deemed necessary and advisable to provide for the conservation of species listed as threatened species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species any act prohibited under section 9(a)(1) of the Act. Exercising this discretion, the Service has developed general prohibitions in the Act's regulations (50 CFR 17.31) and exceptions to those prohibitions (50 CFR 17.32) that apply to most threatened wildlife species. Under 50 CFR 17.32, permits may be issued to allow persons to engage in otherwise prohibited acts for certain purposes.

Under section 4(d) of the Act, the Secretary, who has delegated this authority to the Service, may also develop specific prohibitions and exceptions tailored to the particular conservation needs of a threatened species. In such cases, the Service issues

a 4(d) rule that may include some or all of the prohibitions and authorizations set out in 50 CFR 17.31 and 17.32, but which also may be more or less restrictive than the general provisions at 50 CFR 17.31 and 17.32. For Egyptian tortoise, the Service has determined that a species-specific 4(d) rule is necessary and advisable.

As explained below, the 4(d) rule for the Egyptian tortoise, in part, makes it illegal for any person subject to the jurisdiction of the United States to import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any Egyptian tortoise. It is also illegal to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these) any Egyptian tortoise within the United States or on the high seas; or possess, sell, deliver, carry, transport, or ship, by any means whatsoever any Egyptian tortoise that has been taken in violation of the Act. It is unlawful to attempt to commit, to solicit another to commit or to cause to be committed, any of these acts. Certain exceptions apply to agents of the Service and State conservation agencies. An exception is also provided in the 4(d) rule for interstate commerce from public institutions to other public institutions, specifically museums, zoological parks, and scientific institutions that meet the definition of "public" at 50 CFR 10.12.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits for threatened species are codified at 50 CFR 17.32, and general Service permitting regulations are codified at 50 CFR part 13. With regard to threatened wildlife, a permit may be issued for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, for economic hardship, for zoological exhibition, for educational purposes, and for special purposes consistent with the purposes of the Act. The Service may also register persons subject to the jurisdiction of the United States through its captive-bred wildlife (CBW) program if certain established requirements are met under the CBW regulations (see 50 CFR 17.21(g)). Through a CBW registration, the Service may allow a registrant to conduct certain otherwise prohibited activities under certain circumstances to enhance the propagation or survival of the

affected species, including take; export or re-import; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce, in the course of a commercial activity; or sale or offer for sale in interstate or foreign commerce. A CBW registration may authorize interstate purchase and sale only between entities that both hold a registration for the taxon concerned. The CBW program is available for species having a natural geographic distribution not including any part of the United States and other species that the Service Director has determined to be eligible by regulation. The individual specimens must have been born in captivity in the United States. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the species. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy.

II. Final Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like "necessary and advisable" demonstrates a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide discretion to select and promulgate appropriate regulations tailored to the specific

conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, "once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [s]he may choose to forbid both taking and importation but allow the transportation of such species" (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), as explained below, we developed and are adopting a species-specific rule that sets out all of the protections and prohibitions designed to address the Egyptian tortoise's specific threats and conservation needs. Although the statute does not require us to make a "necessary and advisable" finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Egyptian tortoise.

As discussed above under Summary of Biological Status and Threats, we have concluded that the Egyptian tortoise is likely to become in danger of extinction within the foreseeable future primarily because of habitat loss and degradation and collection for the pet trade, in concert with climate change. Under the 4(d) rule, certain prohibitions and provisions that apply to endangered wildlife under section 9(a)(1) prohibitions will help minimize threats that could cause further declines in the species' status. The provisions of the

4(d) rule promote conservation of the Egyptian tortoise by ensuring that activities undertaken with the species by any person under the jurisdiction of the United States are also supportive of the conservation efforts undertaken for the species in Libya, Egypt, and Israel, as well as under the CITES Appendix-I listing. The provisions of the 4(d) rule are one of many tools we will use to promote the conservation of the Egyptian tortoise.

Provisions of the 4(d) Rule

In the SSA report, we identify factors such as habitat loss and degradation and collection of the species for the pet trade, in concert with climate change, that have negative effects on this species and its habitat. Additionally, we identify existing regulatory mechanisms in the tortoise's range countries of Libya, Egypt, and Israel to conserve the Egyptian tortoise, as well as the international measures of CITES for Appendix-I species. While we have found these regulatory mechanisms are not sufficient to prevent the species from likely becoming in danger of extinction within the foreseeable future throughout all of its range, we recognize the benefits of these regulatory mechanisms in helping to conserve the species.

The 4(d) rule provides for the conservation of the Egyptian tortoise by prohibiting the following activities, except as otherwise authorized or permitted: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce unlawfully taken specimens or offspring of unlawfully taken specimens.

As discussed above under Summary of Biological Status and Threats, habitat loss and degradation and collection of the species for the pet trade are affecting the status of the Egyptian tortoise. A suite of activities has the potential to affect the Egyptian tortoise in its range countries, including urban development, agricultural conversion, grazing, military exercises, and collection for the pet trade. Habitat degradation will continue in the species' range countries. Prohibiting take (which applies to take within the United States, within the territorial sea of the United States, or upon the high seas) will indirectly contribute to conservation of the species in its range countries of Libya, Egypt, and Israel by helping prevent any captive-held Egyptian tortoises in the United States

being used to establish a domestic market for trade of Egyptian tortoise parts or for the commercial pet trade. For the same reason, regulating interstate commerce in the species in the course of commercial activity by persons subject to the jurisdiction of the United States can benefit the species in the wild by limiting demand in the United States to noncommercial activities and permitted commercial activities for scientific purposes or to enhance the propagation or survival of the species in the wild, such as activities associated with bona fide conservation breeding. The United States is not a primary destination for Egyptian tortoises. However, collection of the species for the illegal international pet trade is ongoing. Further regulating import and export to, from, and through the United States and foreign commerce by persons subject to the jurisdiction of the United States could deter breeding and demand for the species, and help conserve the species by eliminating the United States as a potential market for illegally collected and traded Egyptian tortoises.

The 4(d) rule provides an exception for interstate commerce from public institutions to other public institutions, specifically museums, zoological parks, and scientific institutions that meet the definition of "public" at 50 CFR 10.12. Demand for Egyptian tortoises held at or captive-bred by these types of institutions in the United States is not substantial, nor is it likely to pose a significant threat to the wild population in the species' range countries. As defined in our regulations, "public" museums, zoological parks, and scientific institutions refers to such as are open to the general public and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit. This exception applies unless prohibited by CITES regulations, for example if use after import is restricted under 50 CFR 23.55.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. As noted above, we may also authorize certain activities

associated with conservation breeding under CBW registrations. We recognize that captive breeding of wildlife can support conservation, for example by producing animals that could be used for reintroductions. We are not aware of any captive-breeding programs for the Egyptian tortoise for this purpose. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act. The 4(d) rule applies to all live and dead Egyptian tortoise parts and products, and supports conservation management efforts for Egyptian tortoise in the wild in Libya, Egypt, and Israel.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Branch of Delisting and Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the U.S. Fish and Wildlife Service's Species Assessment Team and the Branch of Delisting and Foreign Species.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, amend paragraph (h) by adding an entry for “Tortoise, Egyptian” to the List of Endangered and

Threatened Wildlife in alphabetical order under REPTILES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * *				
REPTILES				
* * * * *				
Tortoise, Egyptian	<i>Testudo kleinmanni</i> (syn. <i>Testudo wernerii</i>).	Wherever found	T	87 FR [Insert Federal Register page where the document begins], March 30, 2023; 50 CFR 17.42(l). ^{4d}
* * * * *				

■ 3. Amend § 17.42 by adding paragraphs (j) through (l) to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(j) [Reserved]

(k) [Reserved]

(l) Egyptian tortoise (*Testudo kleinmanni*, syn. *Testudo wernerii*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Egyptian tortoise. Except as provided under paragraph (l)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth for endangered wildlife at § 17.21(b).

(ii) Take, as set forth for endangered wildlife at § 17.21(c)(1).

(iii) Possession and other acts with unlawfully taken specimens, as set forth for endangered wildlife at § 17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth for endangered wildlife at § 17.21(e).

(v) Sale or offer for sale in interstate or foreign commerce, as set forth for endangered wildlife at § 17.21(f).

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Sell, offer for sale, deliver, receive, carry, transport, or ship in interstate commerce live Egyptian tortoises from one public institution to another public institution, if such activity is in accordance with 50 CFR part 23. For the purposes of this paragraph, “public

institution” means a museum, zoological park, and scientific institution that meets the definition of “public” at 50 CFR 10.12.

(iii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iv) Possess and engage in other acts, as set forth at § 17.21(d)(2) for endangered wildlife.

(v) Conduct activities as authorized by a captive-bred wildlife registration under § 17.21(g) for endangered wildlife.

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–06312 Filed 3–29–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230306–0065; RTID 0648–XC882]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands Management Area; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocations; correction.

SUMMARY: NMFS is correcting a temporary rule that reallocated Aleut Corporation and Community Development Quota pollock from the Aleutian Islands subarea to the Bering

Sea subarea in the Bering Sea and Aleutian Islands management area. The amounts of pollock remaining in the Aleutian Islands subarea were incorrect.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 30, 2023, through 2400 hours, A.l.t., December 31, 2023.

FOR FURTHER INFORMATION CONTACT:

Abby Jahn, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Need for Correction

NMFS published the reallocation of pollock on March 23, 2023 (88 FR 17403). The document contains incorrect amounts of pollock remaining for the Aleutian Islands subarea total allowable catch (TAC) and the Aleut Corporation’s A and B season directed fishing allowance. Aleutian Islands subarea TAC is corrected from 19,000 to 4,500. Aleut Corporation is corrected from 2,100 to 2,000 for column “2023 A season” and from (100) to n/a for column “2023 B season”. NMFS is republishing the table in its entirety with the correct numbers. These corrections will not affect the fishing operations. These corrections are necessary to provide the correct information about the amount of the pollock remaining for the Aleutian Islands subarea TAC and the Aleut Corporation A and B season directed fishing allowance and eliminate potential confusion by fishery participants.

Correction

In the **Federal Register** of March 23, 2023 (88 FR 17403), in FR Doc. 2023–06021, on page 17404, Table 4 is corrected to read as follows:

TABLE 4—FINAL 2023 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) ¹

[Amounts are in metric tons]

Area and sector	2023 Allocations	2023 A season ¹		2023 B season ¹
		A season DFA	Steller sea lion conservation area (SCA) harvest limit ²	B season DFA
Bering Sea subarea TAC ¹	1,314,500	n/a	n/a	n/a
CDQ DFA	131,900	59,355	36,932	72,545
ICA ¹	50,000	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,132,600	509,670	317,128	622,930
AFA Inshore	566,300	254,835	158,564	311,465
AFA Catcher/Processors: ³	453,040	203,868	126,851	249,172
Catch by catchers/processors (CPs)	414,532	186,539	n/a	227,992
Catch by catcher vessels (CVs) ³	38,508	17,329	n/a	21,180
Unlisted CP Limit ⁴	2,265	1,019	n/a	1,246
AFA Motherships	113,260	50,967	31,713	62,293
Excessive Harvesting Limit ⁵	198,205	n/a	n/a	n/a
Excessive Processing Limit ⁶	339,780	n/a	n/a	n/a
Aleutian Islands subarea acceptable biological catch (ABC)	43,413	n/a	n/a	n/a
Aleutian Islands subarea TAC ¹	4,500	n/a	n/a	n/a
CDQ DFA .....	.....	.....	n/a	.....
ICA	2,500	1,250	n/a	1,250
Aleut Corporation	2,000	2,000	n/a	n/a
Area harvest limit: ⁷	n/a	n/a	n/a	n/a
541	13,024	n/a	n/a	n/a
542	6,512	n/a	n/a	n/a
543	2,171	n/a	n/a	n/a
Bogoslof District ICA ⁸	300	n/a	n/a	n/a

Note: Seasonal or sector apportionments may not total precisely due to rounding.

¹ Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (50,000 mt, 4.27 percent), is allocated as a DFA as follows: inshore sector—50 percent, CP sector—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFAs are allocated to the A season (January 20–June 10) and 55 percent of the DFAs are allocated to the B season (June 10–November 1). When the AI pollock ABC equals or exceeds 19,000 mt, the annual TAC is equal to 19,000 mt (§ 679.20(a)(5)(iii)(B)(1)). Pursuant to § 679.20(a)(5)(iii)(B)(2), the Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,500 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated no more than 40 percent of the Aleutian Islands pollock ABC.

² In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before 12 p.m. (noon), April 1.

³ Pursuant to § 679.20(a)(5)(i)(A)(4), 8.5 percent of the allocation to listed CPs shall be available for harvest only by eligible catcher vessels with a CP endorsement delivering to listed CPs, unless there is a CP sector cooperative for the year.

⁴ Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processor sector's allocation of pollock.

⁵ Pursuant to § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

⁶ Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30 percent of the sum of the non-CDQ pollock DFAs.

⁷ Pursuant to § 679.20(a)(5)(iii)(B)(6), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

⁸ Pursuant to § 679.22(a)(7)(i)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This action corrects an error that attributed the total amount of pollock remaining

for the Aleutian Islands subarea TAC (4,500 metric tons (mt)) and the Aleut Corporation (2,000 mt). This correction does not change operating practices in the fisheries. Corrections should be made as soon as possible to avoid confusion for participants in the fisheries.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon

the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 27, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023-06609 Filed 3-27-23; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 88, No. 61

Thursday, March 30, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-0654; Project Identifier MCAI-2022-01505-T]

RIN 2120-AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD-500-1A10 and BD-500-1A11 airplanes. This proposed AD was prompted by reports that, during instrument landing system (ILS) approaches, the flight control system reverted from primary flight control computer (PFCC) normal mode operating in autopilot to remote electronics unit (REU) direct mode, and then, after a period of time, to PFCC direct mode. This proposed AD would require installation of a PFCC software update; and a records review or detailed inspection to identify pre-existing repairs or damage within certain limits to certain structures, and obtaining and following additional instructions if necessary; as specified in a Transport Canada 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 May 15, 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](https://www.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](https://www.regulations.gov) under Docket No. FAA-2023-0654; 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 Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888-663-3639; email AD-CN@tc.gc.ca; website tc.canada.ca/en/aviation. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-0654.

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

FOR FURTHER INFORMATION CONTACT: Steven Dzierzynski, Aerospace Engineer, Avionics & Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7367; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2023-0654; Project Identifier MCAI-2022-01505-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](https://www.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 Steven Dzierzynski, Aerospace Engineer, Avionics & Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7367; email 9-avs-nyaco-cos@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF-2022-65, dated November 23, 2022 (Transport Canada AD CF-2022-65) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD-500-1A10 and BD-500-1A11 airplanes. The MCAI states that airplanes equipped with the CAT IIIB Autoland option, have had numerous occurrences during ILS approaches where the flight control system has reverted from PFCC normal

mode operating in autopilot to REU direct mode, and then, after a period of time, to PFCC direct mode. During these occurrences, the caution message FLT CTRL DIRECT is posted on the engine indication and crew alerting system (EICAS). The MCAI states that it requires a PFCC software update, which includes control law updates that require review and disposition of previous repairs and damage assessments prior to conducting the software update. These pre-existing repairs and damage may exceed the Aircraft Structural Repair Publication (ASRP) permitted damage limits for affected structures and would affect the control laws.

The FAA is proposing this AD to address reversion to direct mode during ILS approaches, which, if not corrected, could impact flight control functions, which could prevent continued safe flight and landing. See the MCAI for additional background information.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-0654.

Related Service Information Under 14 CFR Part 51

Transport Canada AD CF-2022-65 specifies procedures for installing updated PFCC software; this installation includes pre-requisites that must be met prior to the installation (installing

certain database versions and software). In addition, the installation requires a records review or detailed inspection to identify pre-existing repairs and damages (that were within ASRP limits) to certain structures and obtaining and following additional instructions. 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 require accomplishing the actions specified in Transport Canada AD CF-2022-65 described previously, except for any differences identified as exceptions in the regulatory text 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 incorporate Transport Canada AD CF-2022-65 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with Transport Canada AD CF-2022-65 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by Transport Canada AD CF-2022-65 for compliance will be available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-0654 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 72 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × \$85 per hour = \$340	\$14	\$354	\$25,488

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

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

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Docket No. FAA–2023–0654; Project Identifier MCAI–2022–01505–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 15, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada AD CF–2022–65, dated November 23, 2022 (Transport Canada AD CF–2022–65).

(d) Subject

Air Transport Association (ATA) of America Code: 27, Flight control system.

(e) Unsafe Condition

This AD was prompted by reports that, during instrument landing system (ILS) approaches, the flight control system reverted from primary flight control computer (PFCC) normal mode operating in autopilot to remote electronics unit (REU) direct mode, and then, after a period of time, to PFCC direct mode. The FAA is issuing this AD to address reversion to direct mode during ILS approaches, which, if not corrected, could impact flight control functions and could prevent continued safe flight and landing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2022–65.

(h) Exceptions to Transport Canada AD CF 2022–65

(1) Where Transport Canada AD CF–2022–65 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where the service information referenced in Transport Canada AD CF–2022–65 specifies installing software updates

on the PFCCs using a USB-type device, this AD also allows the use of a portable maintenance access terminal (PMAT)-type device.

Note 1 to paragraph (h)(2): When using a PMAT-type device, guidance for updating the software can be found in Airbus Canada Service Bulletin (SB) BD500–270020, Issue 001, dated September 28, 2022.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@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, New York ACO Branch, FAA; or Transport Canada; or Airbus Canada Limited Partnership's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

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

(j) Additional Information

(1) For more information about this AD, contact Steven Dzierzynski, Aerospace Engineer, Avionics & Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; email 9-avs-nyaco-cos@faa.gov.

(2) For Airbus Canada service information identified in this AD that is not incorporated by reference, contact Airbus Canada Limited Partnership, 13100 Henri-Fabre Boulevard, Mirabel, Québec J7N 3C6, Canada; telephone 450–476–7676; email a220_crc@abc.airbus; website a220world.airbus.com. You may view this service information at the FAA,

Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(k) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2022–65, dated November 23, 2022.

(ii) [Reserved]

(3) For Transport Canada AD CF–2022–65, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email AD-CN@tc.gc.ca; website tc.canada.ca/en/aviation.

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

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

Issued on March 24, 2023.

Christina Underwood,

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

[FR Doc. 2023–06492 Filed 3–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0656; Project Identifier MCAI–2022–01433–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by reports of a non-full life clearance in the low-pressure hydraulic pipes of the nose landing gear return line, due to two quality escapes. This proposed AD would require replacing

the affected aluminum pipes with titanium pipes, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also prohibit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 15, 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–2023–0656; 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–2023–0656.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or

arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2023–0656; Project Identifier MCAI–2022–01433–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th Street, Des Moines, WA 98198; telephone 516–228–7317; email: *dat.v.le@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0217R1, dated March 1, 2023 (EASA AD 2022–0217R1) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states Airbus received reports from the manufacturer of a non-full life clearance in the low-pressure hydraulic pipes of

the nose landing gear return line, due to two separate quality escapes. One quality escape occurred when after alodine process application on aluminum pipes, black spots and stains caused by corrosion pitting were found on inner and outer diameters. In a second quality escape, aluminum pipes were identified with an average ovality value (which measures the maximum and minimum outer diameter of the pipe) above the admissible value. This condition, if not corrected, could lead to a premature rupture in the yellow hydraulic line, which, in case of additional independent system failures, could result in reduced airplane controllability.

The FAA is proposing 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–2023–0656.

Related Service Information Under 14 CFR Part 51

EASA AD 2022–0217R1 specifies procedures for replacing the affected aluminum pipes with titanium pipes. EASA AD 2022–0217R1 also prohibits the installation of affected parts.

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 designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0217R1 described previously, except for any differences identified as exceptions in the regulatory text 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 incorporate EASA AD 2022–0217R1 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0217R1 in its entirety 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 2022–0217R1 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 2022–0217R1. Service information required by EASA

AD 2022–0217R1 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–0656 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 24 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 130 work-hours × \$85 per hour = \$11,050	Up to \$16,500	Up to \$27,550	Up to \$661,200.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2023–0656; Project Identifier MCAI–2022–01433–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 15, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–0941 and –1041 airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of a non-full life clearance in the low-pressure hydraulic pipes of the nose landing gear return line within the yellow hydraulic line system, due to two quality escapes. The FAA is issuing this AD to address the quality escapes in the manufacture of these pipes. The unsafe condition, if not addressed, could result in premature rupture in the yellow hydraulic line, which, in case of additional independent system failures, could result in reduced airplane controllability.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0217R1, dated March 1, 2023 (EASA AD 2022–0217R1).

(h) Exceptions to EASA AD 2022–0217R1

(1) Where EASA AD 2022–0217R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the “Remarks” section of EASA AD 2022–0217R1.

(3) Where EASA AD 2022–0217R1 refers to November 18, 2022 (the effective date of EASA AD 2022–0217), this AD requires using the effective date of this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

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

(j) Additional Information

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

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022-0217R1, dated March 1, 2023.

(ii) [Reserved]

(3) For EASA AD 2022-0217R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

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

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

Issued on March 24, 2023.

Christina Underwood,

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

[FR Doc. 2023-06493 Filed 3-29-23; 8:45 am]

BILLING CODE 4910-13-P

FEDERAL TRADE COMMISSION

16 CFR Part 461

RIN 3084-AB71

Trade Regulation Rule on Impersonation of Government and Businesses

AGENCY: Federal Trade Commission.

ACTION: Initial notice of informal hearing; final notice of informal hearing; request for public comment and speakers.

SUMMARY: The Federal Trade Commission has proposed a trade regulation rule entitled “Rule on Impersonation of Government and Businesses,” which would prohibit the impersonation of government, businesses, or their officials. In response to the notice of proposed rulemaking, a commenter requested an informal hearing. The informal hearing will be conducted virtually on May 4, 2023, at 1 p.m. Eastern Time, and the presiding officer will be the Commission’s Chief Administrative Law Judge, D. Michael Chappell.

DATES: Requests to speak at the informal hearing and any documentary submissions must be received by April 14, 2023. The informal hearing will be conducted virtually at 1 p.m. eastern time on May 4, 2023.

ADDRESSES: Interested parties may file a documentary submission online or on paper by following the instructions in the Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write “Impersonation Informal Hearing, R207000” on your documentary submission and file it online at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Christopher E. Brown, cbrown3@ftc.gov, 202-326-2825.

SUPPLEMENTARY INFORMATION: Following public comment on an advance notice of proposed rulemaking, 86 FR 72901, December 23, 2021, the Federal Trade Commission (“Commission” or “FTC”) proposed a Trade Regulation Rule on Impersonation of Government and Businesses as described in a notice of proposed rulemaking (“NPRM”), 87 FR 62741, October 17, 2022. Comments on the NPRM were accepted for 60 days,

and 78 comments were posted to the docket at <https://www.regulations.gov>.¹

I. The Request for an Informal Hearing

As the NPRM noted, if “interested parties request to present their position orally, the Commission will hold an informal hearing, as specified in section 18(c) of the FTC Act, 15 U.S.C. 57a(c).”² The opportunity to make an oral statement at an informal hearing is afforded by section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, and reflected in the Commission’s Rules of Practice, 16 CFR 1.11(e).

The FTC Act provides that “an interested person is entitled to present his position orally or by documentary submission (or both).”³ It also provides that, “if the Commission determines that there are disputed issues of material fact it is necessary to resolve,” then an interested person is further entitled “to present such rebuttal submissions and to conduct . . . cross-examination.”⁴

The Commission’s Rules of Practice elaborate on how an interested person makes such a request. First, any NPRM issued under section 18 of the FTC Act must include an “explanation of the opportunity for an informal hearing and instructions for submissions relating to such a hearing.”⁵ Second, the “Commission will provide an opportunity for an informal hearing if an interested person requests to present their position orally.”⁶ The Commission can also hold an informal hearing on its own initiative.⁷ Third, any request for an informal hearing “must include: (1) A request to make an oral submission, if desired; (2) A statement identifying the interested person’s interests in the proceeding; and (3) Any proposals to add disputed issues of material fact beyond those identified in the notice.”⁸

One comment, timely submitted by William MacLeod, makes such a request: “I request an opportunity for interested parties to air their concerns at a hearing.”⁹ Mr. MacLeod does not

¹ See Fed. Trade Comm’n, Trade Regulation Rule on Impersonation of Government and Businesses, <https://www.regulations.gov/docket/FTC-2022-0064/comments>.

² Fed. Trade Comm’n, Notice of Proposed Rulemaking: Trade Regulation Rule on Impersonation of Government and Businesses, 87 FR 62741, 62741 (Oct. 17, 2022), <https://www.federalregister.gov/documents/2022/10/17/2022-21289/trade-regulation-rule-on-impersonation-of-government-and-businesses>.

³ 15 U.S.C. 57a(c)(2)(A).

⁴ *Id.* 57a(c)(2)(B).

⁵ 16 CFR 1.11(b)(6).

⁶ *Id.* 1.11(e).

⁷ See *id.*

⁸ *Id.*

⁹ William MacLeod, Cmt. on NPRM, at 2 (Dec. 16, 2022), <https://www.regulations.gov/comment/FTC-2022-0064-0078>.

expressly request to make an oral submission,¹⁰ but that requirement in the Rules of Practice is conditional (“if desired”), and the Commission will welcome an oral statement from him and from any other interested persons who request to make one in the manner described below. Mr. MacLeod identifies his interests in the proceeding as desiring that “additional analysis” will aid in developing “an appropriately tailored rule.” He states that his views “are those of the author and do not necessarily reflect the views of” anyone else.¹¹ Mr. MacLeod discusses issues relating to the language of the proposed rule and the applicable legal standard. He does not raise or propose to add any disputed issues of material fact.¹²

The Commission finds that Mr. MacLeod’s comment represents an “adequate request”¹³ and therefore will hold an informal hearing as described below.¹⁴ Because of Mr. MacLeod’s explicit request and the Commission’s resulting obligation to hold an informal hearing, the Commission issues this “initial notice of informal hearing.”¹⁶ CFR 1.12(a). Under the Commission’s Rules of Practice, initial notices of informal hearing contain: the designation of the presiding officer; the time and place of the informal hearing;

the “final list of disputed issues of material fact necessary to be resolved during the hearing, if any”; a list of interested persons who will make oral presentations; and certain other determinations when there are designated issues of material fact.¹⁵

II. Conduct of the Informal Hearing

The Commission’s Chief Presiding Officer designates the Commission’s Chief Administrative Law Judge, D. Michael Chappell, to serve as the presiding officer of the informal hearing.¹⁶ Chief Judge Chappell will conduct the informal hearing virtually using video conferencing at 1 p.m. eastern time on May 4, 2023. The informal hearing will be available for the public to watch live from the Commission’s website, <https://www.ftc.gov>, and a recording or transcript of the informal hearing will be placed in the rulemaking record.

In a section 18 rulemaking proceeding, the NPRM must identify disputed issues of material fact, if any. After reviewing the comments, the Commission has identified no disputed issues of material fact necessary to be resolved at this informal hearing.¹⁷ In the NPRM, the Commission stated: “Based on the comment record and existing prohibitions against impersonation of government and businesses under Section 5 of the FTC Act, the Commission does not here identify any disputed issues of material fact necessary to be resolved at an informal hearing. The Commission may still do so later, on its own initiative or in response to a persuasive showing from a commenter.”¹⁸ The recent comment period did not identify any disputed issues of material fact. Comments about the construction and scope of the proposed rule raise issues of law and policy but no questions of “specific fact” that might warrant cross-examination and rebuttal submissions.¹⁹ As such, the Commission remains of the view expressed in the NPRM that no disputed issues of material fact are necessary to be resolved. Because of that, the informal hearing will include no cross examination or rebuttal submissions.²⁰ The Commission,

however, has not determined whether, and if so in what form, to promulgate a final rule. Because there are no “disputed issues of material fact” to resolve at the informal hearing, the presiding officer of the hearing will make no recommended decision.²¹ His role is to preside over and ensure the orderly conduct of the informal hearing, including selecting the sequence in which oral statements will be heard, and then place the transcript and any additional written submissions received into the rulemaking record.²²

The Commission does not here publish a “list of the interested persons who will make oral presentations” at the informal hearing because no one, including Mr. MacLeod, made such a request in response to the NPRM.²³ The Commission, however, elects to offer here an additional opportunity for interested persons to request to make oral statements.²⁴ If no such requests are made, the presiding officer will state as much at the opening of the informal hearing and then close the hearing, placing any documentary submissions into the rulemaking record.

This initial notice of informal hearing also serves as the “final notice of informal hearing.”²⁵ A final notice of informal hearing is limited in its substance to matters that arise only when the Commission designates disputed issues of material fact: who will conduct cross-examination; whether any interested persons with similar interests will be grouped together for such purposes; and who will make rebuttal submissions.²⁶ Because cross-examination and submission of rebuttal evidence will not occur in this informal hearing, no separate final notice of informal hearing is necessary.

III. Making an Oral Statement or Documentary Submission

If you would like to make an oral statement, you should submit a comment on this rulemaking docket expressly requesting to make an oral statement. You must do so on or before April 14, 2023. Oral statements will be limited to five minutes, although they

only to address disputed issues of material fact necessary to be resolved.”).

²¹ *Id.* 1.13(d) (“The presiding officer’s recommended decision will be limited to explaining the presiding officer’s proposed resolution of disputed issues of material fact.”).

²² *See id.* 1.13(a), (c).

²³ *Id.* 1.12(a)(4).

²⁴ In the future, the Commission may limit oral statements to those who requested to make an oral statement in response to the NPRM, as provided for in the Rules of Practice.

²⁵ *Id.* 1.12(c).

²⁶ *See id.*

¹⁰ *See generally id.*

¹¹ *Id.* at 2.

¹² *See generally id.*

¹³ NPRM, 87 FR at 42747.

¹⁴ Because this is the first section 18 rulemaking held in several decades and comes after the first NPRM for a section 18 rule since the Commission’s July 2021 streamlining of its Rules of Practice, 86 FR 38542, it may be useful to stress a few points. Any request for an informal hearing should identify any disputed issues of material fact, need not be long, and should identify the requester’s interests in the proceeding. The Commission reserves the right to decline any request for participation that fails to disclose the requester’s identity and interest in the proceeding. Lawyers and others who act on behalf of clients or other individuals or entities should expressly identify those whom they are representing with an interest in the proceeding—or disclaim, as Mr. MacLeod did, that they are acting on behalf of any client. The request does not need to be made by a lawyer or with any special degree of formality. It is useful, although not required, to describe why the requesters think the informal hearing is warranted, how they would participate, and a summary of their expected testimony. A comment from Americans for Prosperity Foundation stated that the Commission “should” hold an informal hearing. While this language falls short of an explicit request, the Commission may elect on its own initiative to hold an informal hearing, and therefore, finds American Prosperity Foundation’s comment as further support to hold such a hearing in this matter. Ams. for Prosperity Found., Cmt. on NPRM, at 8 (Dec. 16, 2022), <https://www.regulations.gov/comment/FTC-2022-0064-0062> (“For the foregoing reasons, the FTC should hold an informal public hearing soliciting additional public input, extend the comment period for at least another 30 days, and substantially revise its proposed rule to ensure the final Impersonation Rule complies with the Constitution, Section 5, and the Deception Statement.”).

¹⁵ 16 CFR 1.12(a)(3).

¹⁶ *See* 16 CFR 1.13(a)(1) (“the initial notice of informal hearing must designate a presiding officer, who will be appointed by the Chief Presiding Officer.”). As of this publication, the Commission’s Chair is serving as Chief Presiding Officer under Commission Rule 0.8. 16 CFR 0.8.

¹⁷ *See* 16 CFR 1.11(b)(5).

¹⁸ NPRM, 87 FR at 62747.

¹⁹ 16 CFR 1.12(b)(1).

²⁰ *Id.* 1.12(b) (“Cross-examination and rebuttal submissions at an informal hearing are available

may be supplemented by documentary submissions as described below. Transcripts of the oral statements will be placed in the rulemaking record. Interested persons who timely request to make an oral statement will be provided with instructions as to how to participate in the virtual hearing. Requesters who need assistance should indicate as much in their comment, and the Commission will endeavor to provide accommodations. Requesters without the computer technology necessary to participate in video conferencing will be able to participate in the informal hearing by telephone; they should indicate as much in their comments.

You can also file a documentary submission online. For the Commission to consider your documentary submission, you must file it on or before April 14, 2023. Write "Impersonation Informal Hearing, R207000" on your submission. Your documentary submission—including your name and your state—will be placed on the public record of this proceeding, including on the website <https://www.regulations.gov>. To ensure that the Commission considers your online documentary submission, please follow the instructions on the web-based form.

Because your documentary submission will be placed on the public record, you are solely responsible for making sure that it does not include any sensitive or confidential information. In particular, your documentary submission should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your documentary submission does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your documentary submission should not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential"—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Documentary submissions containing material for which confidential treatment is requested must be filed in

paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the documentary submission must include the factual and legal basis for the request and must identify the specific portions to be withheld from the public record. See Commission Rule 4.9(c). Your documentary submission will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your documentary submission has been posted publicly at <https://www.regulations.gov>—as legally required by Commission Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove it, unless you submit a confidentiality request that meets the requirements for such treatment under Commission Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of documentary submissions to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive documentary submissions it receives on or before April 14. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/siteinformation/privacypolicy>.

IV. Communications by Outside Parties to the Commissioners or Their Advisors

Under Commission Rule 1.18(c)(1), 16 CFR 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor will be subject to the following treatment: Written communications and summaries or transcripts of all oral communications must be placed in the rulemaking record. Unless the outside party making an oral communication is a Member of Congress, communications received after the close of the public-comment period are permitted only if advance notice is published in the Weekly Calendar and Notice of "Sunshine" Meetings.

By direction of the Commission.

April J. Tabor,
Secretary.

[FR Doc. 2023-06537 Filed 3-29-23; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. FDA-2023-N-0437]

Filing of Color Additive Petition From Center for Science in the Public Interest, et al.; Request To Revoke Color Additive Listing for Use of FD&C Red No. 3 in Food and Ingested Drugs; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Petition for rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the color additive petition for which we published a notice of filing in the **Federal Register** of February 17, 2023. In the notice, FDA requested comments on a filed color additive petition submitted by Center for Science in the Public Interest, et al., proposing that FDA repeal the color additive regulations providing for the use of FD&C Red No. 3 in foods (including dietary supplements) and in ingested drugs. We are taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the color additive petition for which a notice of filing was published in the **Federal Register** of February 17, 2023 (88 FR 10245). Either electronic or written comments must be submitted by May 18, 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 on 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.

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-0437 for "Filing of Color Additive Petition from Center for Science in the Public Interest, et al.; Request to Revoke Color Additive Listing for Use of FD&C Red No. 3 in Food and Ingested Drugs." 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." We will review this copy, including the claimed confidential information, in our 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:

Shayla West-Barnette, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-1262.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 17, 2023 (88 FR 10245), we published a notice of filing of a color additive petition with a 60-day comment period. We explained that, under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 379e(d)(1)), we were giving notice that we had filed a color additive petition (CAP 3C0323), submitted by Center for Science in the Public Interest, Breast Cancer Prevention Partners, Center for Environmental Health, Center for Food Safety, Chef Ann Foundation, Children's Advocacy Institute, Consumer Federation of America, Consumer Reports, Defend Our Health, Environmental Defense Fund, Environmental Working Group, Feingold Association of the United States, Food & Water Watch, Healthy Babies Bright Futures, Life Time Foundation, Momsrising, Prevention Institute, Public Citizen, Public Health Institute, Public Interest Research Group, Real Food for Kids, Lisa Y. Lefferts, Linda S. Birnbaum, and Philip J. Landrigan, c/o Jensen Jose, 1250 I Street NW, Suite 500, Washington, DC 20005. The color additive petition proposes that we repeal the color

additive regulations for FD&C Red No. 3 in 21 CFR 74.303, which permits the use of FD&C Red No. 3 in foods (including dietary supplements), and 21 CFR 74.1303, which permits the use of FD&C Red No. 3 in ingested drugs.

We have received a request for a 60-day extension of the comment period for the color additive petition. The request conveyed concern that the current 60-day comment period does not allow sufficient time to develop a thoughtful response to the color additive petition.

FDA has considered the request and is extending the comment period for the color additive petition until May 18, 2023. We believe that a 30-day extension allows adequate time for interested persons to submit comments without significantly delaying a response to this petition.

We also clarify a statement in the notice of filing. In describing the petitioners' claim that the action they sought in their petition is categorically excluded under our environmental regulations at § 25.32 (21 CFR 25.32), we referred only to a categorical exclusion for food packaging (88 FR 10245 at 10246). The regulation we cited, § 25.32(m), categorically excludes an action to prohibit or otherwise restrict or reduce the use of a substance in food, food packaging, or cosmetics.

Dated: March 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-06579 Filed 3-29-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0050]

RIN 1625-AA00

Safety Zone; Gallants Channel, Beaufort, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a safety zone on the navigable waters of Gallants Channel near Beaufort, NC. The safety zone is necessary to enhance the safety of mariners and participants during the swim portion of a triathlon. Entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) North Carolina or a designated

representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 1, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0050 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Ken Farah, Waterways Management Division, U.S. Coast Guard; telephone 910–772–2221, email ncmarineevents@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On February 1, 2023, the FS Series organization notified the Coast Guard that it will be hosting the Crystal Coast Triathlon in Beaufort, NC. The swim portion of this event will take place from 8 to 10 a.m. on the waters of Gallants Channel each year on the second Saturday in May. The swim portion of the Crystal Coast Triathlon will consist of approximately 400 participants. The racecourse will be on the waters of Gallants Channel and will run from the Route 70 Bridge in Beaufort, NC, then North-West to Russel Slough Channel Day-Beacon 10 (LLNR34860). The Captain of the Port, Sector North Carolina (COTP) has determined that the presence of vessels and anyone else in or transiting the designated area of Gallants Channel in Beaufort, NC during the swim portion of the triathlon would pose a safety concern to the large number of swimmers on the waterway then, and to the vessels and others within the designated area.

The purpose of this rulemaking is to ensure the safety of vessels, participants, and other persons from the hazards associated with the event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 8 through 10 a.m. every second Saturday in May, although the enforcement period would be subject to change. The safety zone will include all navigable waters of Gallants Channel from the Route 70 Bridge in Beaufort, NC, at N 34°43′38″, W 076°40′04″ then North-West to Russel Slough Channel Day-Beacon 10 (LLNR34860) at N 34°43′58″, W 076°40′27.5″. This area is typically used by recreational boaters. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. To request permission to transit the area, mariners can contact Coast Guard Sector North Carolina Command Center at telephone number (910) 343–3882 or on-scene representatives on VHF–FM marine band radio channel 16 (156.8 MHz). The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will not be able to safely transit around this safety zone, which will impact a designated area of Gallants Channel in Beaufort, NC. The two-hour enforcement period should not be overly burdensome to any vessel or entity because it is not an area normally used for commercial vessel traffic. The Coast Guard will issue a Broadcast Notice to Mariners about the safety zone and about this rule, to notify vessels in the region of the establishment of this regulation. The rule will allow vessels to request permission from the COTP or a designated representative to enter the zone if necessary.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting two hours that prohibits entry into portions of Gallants Channel in Beaufort, NC. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2023–0050 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a “Subscribe” option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy

and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.529 to read as follows:

§ 165.529 Safety Zone: Gallants Channel, Beaufort, NC.

(a) **Definitions.** For the purposes of this section—

Captain of the Port means the Commander, Coast Guard Sector North Carolina.

Participant means an individual or vessel involved with the Crystal Coast Triathlon.

Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) **Location.** The following area is a safety zone: all navigable waters of Gallants Channel from the Route 70 Bridge in Beaufort, NC, at N 34°43′38″, W 076°40′04″ then North-West to Russel Slough Channel Day-Beacon 10 (LLNR34860) at N 34°43′58″, W 076°40′27.5″.

(c) **Regulations.** (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (b) of this section.

(2) With the exception of the participants, entry into or remaining in this safety zone is prohibited unless authorized by the COTP, Sector North Carolina or a designated representative.

(3) No vessel may be present in the safety zone when it is subject to enforcement, and any vessel in violation of that prohibition must depart the zone immediately.

(4) The COTP North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina, at telephone number 910–343–3882.

(5) The Coast Guard can be contacted on VHF–FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced the second Saturday in May, from 8 through 10 a.m. The enforcement period may change, but a notice will be provided if there is a change in the enforcement period.

Dated: March 27, 2023.

Matthew J. Baer,

Captain, U.S. Coast Guard, Captain of the Port, Sector North Carolina.

[FR Doc. 2023-06637 Filed 3-29-23; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2023-0012, FRL-10612-01-R10]

Air Plan Approval; Idaho: Inspection and Maintenance Program Removal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve revisions to the Idaho State Implementation Plan (SIP) submitted by the State of Idaho (Idaho or the State) on December 29, 2022. The proposed revision, applicable in the Boise-Northern Ada County Carbon Monoxide area (Northern Ada County CO area) in Idaho, removes the Inspection and Maintenance (I/M) program, which was previously approved into the SIP for use as a control measure in the State's plan to address motor vehicle emissions in the nonattainment area. The SIP submission includes a demonstration that the requested revision will not interfere with attainment or maintenance of any national ambient air quality standard (NAAQS) or with any other applicable requirement of the Clean Air Act (CAA or Act). The EPA evaluated whether this SIP revision would interfere with the requirements of the CAA and is proposing to determine that Idaho's December 29, 2022, SIP revision is consistent with the applicable portions of the CAA.

DATES: Comments must be received on or before May 1, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2023-0012, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel, EPA Region 10 at (206) 553-6121, or vaupel.claudia@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" is used, it means the EPA.

I. Background

Each state has a SIP containing the control measures and strategies used to attain and maintain the NAAQS established by the EPA for the six criteria pollutants (carbon monoxide (CO); nitrogen dioxide (NO₂); ozone (O₃); sulfur dioxide (SO₂); particulate matter, both (PM_{2.5}) and (PM₁₀); and lead (Pb)). The SIP contains such elements as air pollution control regulations, emission inventories, attainment demonstrations, and enforcement mechanisms. Section 110 of the CAA requires each state to periodically revise its SIP. As a result, the SIP is a living compilation of regulatory and non-regulatory elements that are updated to address Federal requirements and changing air quality issues in the state.

Idaho has implemented a mandatory motor vehicle I/M program as part of the

Northern Ada County CO area SIP since the 1980s. (*See* 50 FR 23810, June 6, 1985). On March 3, 1978, the EPA designated the Northern Ada County CO area as nonattainment for the 1971 CO NAAQS (43 FR 8962). Under CAA section 107(d)(1)(C), the nonattainment designation for the Northern Ada County CO area was retained by operation of law following enactment of the Clean Air Act Amendments of 1990 (56 FR 56818, November 6, 1991).¹

On January 17, 2002, Idaho submitted a request to the EPA to redesignate the Northern Ada County CO area to attainment. In accordance with CAA section 175A(a), at the same time Idaho submitted the redesignation request, Idaho submitted a maintenance plan to maintain the CO NAAQS for 10 years after redesignation. The EPA redesignated the Northern Ada County CO area to attainment for the CO NAAQS on October 28, 2002, and approved Idaho's 10-year maintenance plan. (*See* 67 FR 65713). In accordance with CAA section 175A(b), Idaho submitted a second maintenance plan to maintain the CO NAAQS for another 10 years following the conclusion of the first 10-year maintenance period. On August 2, 2012, the EPA approved Idaho's maintenance plan to maintain the CO NAAQS for a second 10-year period in the Northern Ada County CO area (*See* 77 FR 45962). Accordingly, pursuant to CAA section 175A, the 20-year maintenance period for the Northern Ada County CO area ended on December 27, 2022. Although the CAA section 175A 20-year maintenance period has expired, all control measures in the maintenance plan remain in effect and must be complied with until the state submits, and the EPA approves, a SIP revision.² However, the CAA section 175A(d) requirement for contingency measures to include all control measures contained in the SIP prior to redesignation does not preclude the removal of control measures once the second 10-year maintenance plan period has expired.³

Table 1 of this preamble lists the local ordinances that were approved into the Idaho SIP as part of the Northern Ada County CO area maintenance plans to implement the I/M program. In the December 29, 2022, submission, Idaho requested that the EPA remove the ordinances in Table 1 of this preamble from the Idaho SIP.

¹ Under CAA section 107(d)(1)(C), any area that was designated nonattainment before enactment of the Clean Air Act Amendments of 1990 was to retain the designation upon enactment by operation of law. The CO nonattainment areas that had not violated the CO standard in either year of the two-year period 1988–1989 were to be designated

nonattainment with the classification "not classified." Accordingly, on November 6, 1991, the Boise-Northern Ada County CO area was designated nonattainment for the CO NAAQS by the EPA with a classification of "not-classified" (56 FR 56818, November 6, 1991).

² See "Transportation Conformity Guidance for Areas Reaching the End of the Maintenance Period," available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100KPP0.PDF?Dockey=P100KPP0.PDF>.

³ See 84 FR 2109 at pg. 2111 (February 6, 2019).

TABLE 1—LOCAL I/M ORDINANCES THAT IDAHO REQUESTS BE REMOVED FROM THE NORTHERN ADA COUNTY CO SIP

Local agency	Ordinance title	Local agency approval date
Air Quality Board	Motor Vehicle Emissions Control Ordinance	1/1/2010
Ada County	The 1999 Motor Vehicle Emissions Control Ordinance	6/15/1999
City of Boise	The 1999 Motor Vehicle Emissions Control Ordinance	7/20/1999
City of Eagle	The 1999 Motor Vehicle Emissions Control Ordinance	4/27/1999
City of Garden City	The 1991 Vehicle Emission Control Ordinance	8/13/1996
City of Meridian	The 1999 Motor Vehicle Emissions Control Ordinance	6/1/1999

On December 29, 2022, Idaho submitted a SIP revision to the EPA that removes the I/M program from the Northern Ada County CO area SIP.

II. Requirements of CAA Section 110(l)

CAA section 110(l) provides that “. . . The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in [CAA section 171]) or any other applicable requirement of [the CAA].” 42 U.S.C. 7410(l). CAA section 110(l) applies to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable or maintenance for one or more of the six criteria pollutants. Before the EPA can conclude that the SIP revision is allowed under CAA section 110(l), the

EPA must first conclude that the particular plan revision meets CAA requirements.⁴

The EPA interprets CAA section 110(l) as applying to all NAAQS that are in effect, including those for which SIP submissions have not been made, therefore the EPA considers the impact of the SIP revision on emissions and/or ambient concentrations of any pollutant. Additionally, in certain circumstances a state may demonstrate non-interference with CAA applicable requirements by substituting equivalent emissions reductions to compensate for any change to a plan to ensure actual emissions to the air are not increased and thus preserve status quo air quality.⁵

III. Evaluation of Submission

A. Monitoring Values and Event Data

Idaho evaluated air quality design values in the Northern Ada County CO area for CO, NO₂, O₃, SO₂, PM_{2.5} and PM₁₀.^{6 7 8} The design values included in Idaho's submission were based on the latest available data when the SIP revision was developed and submitted.

Idaho operates two CO monitoring sites in the Northern Ada County CO area and provided CO design values from 2017 to 2021. As shown in Table 2 of this preamble, the 8-hour CO design values ranged from 0.7 parts per million (ppm) to 4.1 ppm and were well below the 9 ppm 8-hour CO NAAQS.⁹ The 1-hour CO design values, shown in Table 3 of this preamble, were also well below the 35 ppm 1-hour CO NAAQS, ranging from 1.0 ppm to 15.9 ppm during the same time period.

TABLE 2—2017–2021 CO 1-HOUR DESIGN VALUES

[ppm]

Site name	AQS ID	2016–2017	2017–2018	2018–2019	2019–2020	2020–2021
Meridian St. Luke's	160010010	1.4	1.0	1.0	1.09	1.0
Boise Eastman	160010014	15.9	15.9	4.6	2.5	2.5

TABLE 3—2017–2021 CO 8-HOUR DESIGN VALUES

[ppm]

Site name	AQS ID	2016–2017	2017–2018	2018–2019	2019–2020	2020–2021
Meridian St. Luke's	160010010	4.1	4.1	1.6	0.9	0.9
Boise Eastman	160010014	0.9	0.7	1.6	1.5	1.5

In the second quarter of 2019, Idaho began reporting year-round monitoring data for NO₂ for the Northern Ada County CO area (AQS ID 160010010). The 1-hour NO₂ design value is the 3-year average of the 98th percentile of the 1-hour daily maximum, and the NO₂

NAAQS is 100 parts per billion (ppb).¹⁰ Because there is not complete NO₂ monitoring data for the first quarter of 2019, we do not have a valid NO₂ design value for the area. However, Idaho provided the 98th percentiles for 2019, for quarters 2 through 4 (40.8 ppb), and

for all quarters of 2020 (43.1 ppb) and 2021 (45.1 ppb). Based on this data, Idaho calculated the 3-year average of 98th percentile of 43 ppb, which is below the 100 ppb NO₂ NAAQS. The annual NO₂ NAAQS is calculated as the annual mean. The annual NO₂ mean for

⁴ *Hall v. EPA*, 273 F.3d 1146, 1160 (9th Cir. 2001).

⁵ See *Hall v. EPA*, 273 F.2d at 1160 n. 11; 1161 n. 12 (reasoning that the “no relaxation” test would clearly be appropriate in areas attaining the NAAQS).

⁶ For a review of the National Ambient Air Quality Standards, averaging time, and form, please

visit <https://www.epa.gov/criteria-air-pollutants/naaqs-table>.

⁷ A design value is a statistic that describes the air quality status of a given location relative to the level of the National Ambient Air Quality Standards (NAAQS). See <https://www.epa.gov/air-trends/air-quality-design-values#:~:text=Design%20Value%20Reports,What%20is%20a>

[%20Design%20Value%3F,in%2040%20CFR%20Part%2050%20](#).

⁸ See the EPA's September 14, 2022, approval of Idaho's Annual Monitoring Network Plan, included in the docket for this action.

⁹ 40 CFR 50.8.

¹⁰ 40 CFR 50.11.

the Northern Ada County CO area was 9.84 ppb in 2021 and 9.59 ppb in 2020. These values are well below the 53 ppb annual NO₂ NAAQS.

Idaho provided design values for the two ozone monitoring sites in the Northern Ada County CO area. The 2019–2021 ozone design values were 0.065 ppm (AQS ID 160010010) and 0.063 ppm (AQS ID 160010017). These design values are below the 2015 8-hour ozone NAAQS of 0.070 ppm.¹¹

Idaho also provided the 2019–2021 1-hour SO₂ design value for the Northern Ada County CO area. The 2 ppb design value (AQS ID 160010010) is well below the 75 ppb 1-hour SO₂ NAAQS.

Idaho operates two PM_{2.5} monitors in the Northern Ada County CO area. The 2019–2021 24-hour PM_{2.5} design value at the Meridian St. Luke's monitoring site is 30 micrograms per cubic meter (µg/m³) (AQS ID 160010010). This is below the 35 µg/m³ 24-hour PM_{2.5} NAAQS. The 2019–2021 annual PM_{2.5} design value at this site is 7.3 µg/m³. This is also below the annual 12.0 µg/m³ PM_{2.5} NAAQS.¹²

Idaho operates two PM₁₀ monitors in the Northern Ada County CO area. The 2019–2021 24-hour PM₁₀ design value at the Boise Fire Station #5 monitoring site is 0.0 (the number of expected exceedances). Because of incomplete data, Idaho does not have valid PM_{2.5} or PM₁₀ 2019–2021 design values for the Nampa Fire Station monitoring site (AQS ID 160270002).¹³

B. Vehicle Emission Trends in Idaho

In the December 29, 2022, SIP submission seeking removal of the I/M program, Idaho provided an evaluation of projected changes in on-road mobile source emissions through 2040. Idaho's submission shows that vehicle miles traveled (VMT) are projected to increase through 2040. However, older cars continue to be replaced with newer, cleaner models that have more stringent emissions controls and higher fuel efficiencies. Idaho explained that this fleet turnover has led to the I/M program achieving fewer emissions reductions each year in the Northern Ada County CO area. Idaho used the EPA's MOVES3¹⁴ model to assess emissions for years 2015, 2020, 2022, 2025, 2030, 2035, and 2040. Idaho's analysis focused on carbon monoxide (CO), nitrogen oxides (NO_x), volatile organic compounds (VOCs), and fine particulate matter (PM_{2.5}) emissions.¹⁵

Idaho analyzed projected on-road mobile source emissions for CO, NO_x, and VOCs in the Northern Ada County CO area and determined that the area will continue to see emissions decrease through 2040, both with and without the I/M program in effect. These reductions are primarily expected from fleet turnover and implementation of more stringent Federal motor vehicle emission standards in newer vehicles. Based on Idaho's projections, through 2040, the I/M program accounts for an 11%–12% reduction in total annual onroad CO emissions, 2%–3%

reduction in total annual onroad NO_x emissions, and a 5% reduction in total annual VOC emissions. Based on these projections, even without the I/M program in place, Ada County CO, NO_x and VOC emissions will continue to decrease.

Idaho also estimated long-term emission reductions. Idaho used MOVES modeling to project emissions to an outlying year of 2040. Table 4 of this preamble shows seasonal projected percent reductions in total emissions in the Northern Ada County CO area without the I/M program in place from 2015 to 2040 and from 2022, the last year of the I/M program, to 2040. For total CO and NO_x emissions, Idaho analyzed summer season (June through August), winter season (December through February), and ozone season (April through September) total emissions. For total VOC emissions, Idaho analyzed summer and ozone season emissions. For PM_{2.5}, Idaho analyzed winter season emissions. Idaho selected the seasons for each pollutant according to when emissions from motor vehicles are expected to have the highest concentrations. Ozone season was selected for NO_x and VOCs because they are precursors to ozone. In the winter, multiday air stagnation events are common in the area and result in elevated concentrations for all pollutants.

TABLE 4—PERCENT REDUCTION IN TOTAL EMISSIONS BY SELECTED SEASONS IN THE NORTHERN ADA COUNTY CO AREA WITHOUT THE I/M PROGRAM FROM 2015 TO 2040 AND FROM 2022 TO 2040

Pollutant	Season	2015–2040 (%)	2022–2040 (%)
CO	Summer	62	46
	Winter	53	40
	Ozone Season	63	45
NO _x	Summer	72	48
	Winter	69	47
	Ozone Season	72	46
VOC	Summer	60	36
	Ozone Season	59	34
PM _{2.5}	Winter	45	17

Idaho attributes the long-term emissions reductions in the area, without the I/M program, to more

stringent Federal motor vehicle emissions standards in newer vehicles and continuing fleet turnover. Idaho

notes that on-road winter PM_{2.5} emissions increase slightly starting in 2040 when projected increases in

¹¹ 40 CFR 50.19.

¹² 40 CFR 50.18.

¹³ Because of incomplete data, Idaho does not have valid PM 2019–2021 design values for the Nampa Fire Station monitoring site (AQS ID 160270002), however, Idaho calculated estimated design values at that location using the available data. The estimated 24-hour PM_{2.5} design value is 35 µg/m³, and the estimated annual PM_{2.5} design

value is 8.9 µg/m³. The estimated PM₁₀ design value is 0.0.

¹⁴ The EPA's Motor Vehicle Emission Simulator (MOVES) is a state-of-the-science emission modeling system that estimates emissions for mobile sources at the national, county, and project level for criteria air pollutants, greenhouse gases, and air toxics. See <https://www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves>.

¹⁵ NO_x and VOCs are precursors to ozone. Ozone is a criteria pollutant that is formed in photochemical reactions in the atmosphere involving NO_x and VOCs. Onroad vehicles are not a significant source of Pb or PM₁₀ emissions. Therefore, removal of the I/M program is not expected to interfere with attainment or maintenance of the Pb or PM₁₀ NAAQS.

population growth, vehicle population, and VMT begin to outweigh the emissions benefits from stricter Federal motor vehicle emissions standards. Idaho also notes that the MOVES3 model does not calculate on-road PM_{2.5} emissions benefits from the I/M program.

The EPA reviewed the on-road modeling performed by Idaho. The emission trends analysis shows that any changes in emissions associated with the removal of the I/M program are expected to be relatively minor compared to the emission reductions associated with the turnover of older, higher-emitting vehicles for newer, lower-emitting vehicles.

In summary, emissions in the Northern Ada County CO area are projected to decrease even if the I/M

program is discontinued. This continued projected decrease in emissions, despite projected increases in VMT, is expected due to fleet turnover and more stringent Federal vehicle standards.

C. Conclusion

The Northern Ada County CO area is attaining the NAAQS with current on-road emission levels. On-road emissions will continue to decrease as older vehicles are replaced with newer, lower-emitting vehicles and these decreases are projected to continue despite population growth due to Federal motor vehicle emissions standards even if this SIP revision is approved.

The emission trends analysis in the SIP revision, shows that on-road emissions in the Northern Ada County

CO area will generally continue to decrease even if the proposed SIP revision is approved. Based on our evaluation of the analysis submitted by the state of Idaho, the EPA concludes that the removal of the I/M program will not interfere with attainment or maintenance of the NAAQS.

IV. What action is the EPA proposing?

The EPA is proposing to approve the Idaho SIP revision requesting to remove the Northern Ada County I/M program from the Idaho SIP. Specifically, the EPA is proposing to revise the Northern Ada County Air Quality Maintenance Area Second 10-year Carbon Monoxide Limited Maintenance Plan in 40 CFR 52.670(e) and remove the following local ordinances from incorporation by reference in 40 CFR 52.670(c):

State citation	Title/subject	State effective date
Ada County Ordinance	The 1999 Motor Vehicle Emissions Control Ordinance	6/15/1999
City of Boise Ordinance	The 1999 Motor Vehicle Emissions Control Ordinance	7/20/1999
City of Eagle Ordinance	The 1999 Motor Vehicle Emissions Control Ordinance	4/27/1999
City of Garden City Ordinance	The 1991 Vehicle Emission Control Ordinance	8/13/1996
City of Meridian Ordinance	The 1999 Motor Vehicle Emissions Control Ordinance	6/1/1999

The EPA believes that Idaho's demonstration that removal of the I/M program will not interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the CAA meets CAA section 110(l) requirements. The EPA is requesting comments on the proposed approval.

V. Incorporation by Reference

In this document, the EPA is proposing to remove, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to remove the local ordinances identified in section IV of this preamble. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the EPA Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that

they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those already imposed by state law. For that reason, this action:

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

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

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 23, 2023.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2023–06461 Filed 3–29–23; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 52

[EPA–R09–OAR–2022–0972; FRL–R9–10529–01]

**Second 10-Year Maintenance Plan for
the Coso Junction PM₁₀ Planning
Area; California**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the “Coso Junction PM₁₀ Planning Area Second 10-Year Maintenance Plan” (“Coso Junction Second Maintenance Plan” or “Plan”) as a revision to the state implementation plan (SIP) for the State of California. The Coso Junction Second Maintenance Plan includes, among other elements, a base year emissions inventory, a maintenance demonstration, and contingency provisions. The EPA is proposing this action because the SIP revision meets the applicable statutory and regulatory requirements for such plans. The EPA is also proposing to find the contribution of motor vehicles to the area’s continued attainment of the 1987 PM₁₀ standard to be insignificant and is initiating the adequacy review process for this insignificance finding through this Notice of Proposed Rule Making (NPRM). If this insignificance finding is finalized, the area would not have to complete a regional emissions analysis for any transportation conformity determinations necessary for the Coso Junction Planning Area (CJPA).

DATES: Comments must be received on or before May 1, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0972 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lindsay Wickersham, EPA Region IX (ARD–2), 75 Hawthorne Street, San Francisco, CA 94105. By phone: (415) 947–4192, or by email at wickersham.lindsay@epa.gov.

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

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I. Background

A. The PM₁₀ National Ambient Air Quality Standards

Section 109 of the Clean Air Act (CAA) or the “Act”) grants the EPA the authority to set national ambient air quality standards (NAAQS or “standards”) for certain ambient air

pollutants in order to protect public health and welfare.¹ Particulate matter (PM) refers to the mixture of solid particles and liquid droplets found in the air. PM is among the ambient air pollutants for which the EPA has established health-based standards. PM₁₀ is defined as inhalable particles with diameters that are 10 micrometers or less. PM₁₀ can cause adverse health effects by penetrating deep into the lungs and blood stream, leading to lung damage, increased respiratory disease, and premature death. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987, the EPA established primary and secondary NAAQS for PM₁₀.² At that time, the EPA established two PM₁₀ standards: an annual standard and a 24-hour standard.³ Effective December 18, 2006, the EPA revoked the annual PM₁₀ standard but retained the 24-hour PM₁₀ standard.⁴ An area attains the 24-hour standard of 150 micrograms per cubic meter (µg/m³) when the expected number of days per calendar year with a 24-hour concentration above the standard (referred to as an “exceedance”),⁵ averaged over three years, is equal to or less than one. The expected number of exceedances averaged over a three-year period at any regulatory monitor is known as the PM₁₀ design value. The PM₁₀ design value for the area is the highest design value within the nonattainment area.⁶

Generally, the EPA determines whether an area’s air quality is meeting the PM₁₀ NAAQS based on the most

¹ CAA section 109(b). For a given air pollutant, “primary” standards are those determined by the EPA as requisite to protect the public health. “Secondary” standards are those determined by the EPA as requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.

² 52 FR 24634.

³ The primary and secondary standards were set at the same level for both the 24-hour and the annual PM₁₀ standards.

⁴ 71 FR 61144 (October 17, 2006).

⁵ An exceedance is defined as a daily value that is above the level of the 24-hour standard (*i.e.*, 150 µg/m³) after rounding to the nearest 10 µg/m³ (*i.e.*, values ending in five or greater are to be rounded up). Thus, a recorded value of 154 µg/m³ would not be an exceedance because it would be rounded to 150 µg/m³. A recorded value of 155 µg/m³ would be an exceedance because it would be rounded to 160 µg/m³. 40 CFR part 50, appendix K, section 1.0.

⁶ 40 CFR 50.6 and 40 CFR part 50, appendix K. The comparison with the allowable expected exceedance rate of one per year averaged over three years is made in terms of a number rounded to the nearest tenth (fractional values equal to or greater than 0.05 are to be rounded up; *e.g.*, an exceedance rate of 1.05 would be rounded to 1.1, which is the minimum design value for nonattainment). 40 CFR part 50, appendix K, section 2.1(b).

recent complete,⁷ quality-assured, and certified data measured at established state and local air monitoring stations (SLAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitoring sites operated by state, local, or tribal agencies in compliance with the EPA's monitoring requirements must be submitted to AQS. These monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, the EPA relies primarily on data in AQS when determining the attainment status of an area.⁸ All valid data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix K.

B. The Coso Junction PM₁₀ Planning Area

Through its enactment of the CAA Amendments of 1990, Congress designated certain areas of the country as nonattainment areas for the PM₁₀ NAAQS. The Searles Valley Planning Area was one of the areas designated as nonattainment. In 1991, the EPA classified the Searles Valley planning area as a "Moderate" PM₁₀ nonattainment area.⁹

The Searles Valley Planning Area included three subregions (Coso Junction, Indian Wells Valley, and Trona) under the planning jurisdiction of different air pollution control agencies. On August 6, 2002, the EPA changed the boundaries of the Searles Valley PM₁₀ nonattainment area by dividing this area into three separate, newly-created PM₁₀ nonattainment areas, one of which is the CJPA.¹⁰ The CJPA is under the planning jurisdiction of the Great Basin Unified Air Pollution Control District (GBUAPCD or "District").¹¹ It covers approximately 792 square miles of sparsely populated, arid, high desert that receives less than five inches of rain per year. The CJPA is flanked by the Sierra Nevada Mountains to the west and the Coso Range to the east. A majority of the CJPA is covered by the China Lake Naval Air Weapons Station, which is generally restricted from public access.

Owens Lake, located in neighboring Inyo County and within the Owens

Valley Planning Area, is also under the jurisdiction of GBUAPCD.¹² Starting in 1913, the Los Angeles Department of Water and Power began diverting water from Owens Lake until the lake was almost completely dry. Winds blowing over the dry, alkaline bed of Owens Lake have produced among the highest measured concentrations of PM₁₀ ever recorded and can have impacts as far as 150 miles away.¹³ To mitigate impacts of Owens Lake dust, the GBUAPCD developed the controls and plans for the Owens Valley Planning Area with many participants including the California Air Resources Board (CARB), Los Angeles Department of Water and Power, the City of Los Angeles, tribal governments, federal land managers, the Navy, the State Lands Commission, and members of the public.

Since approval of the 1998 PM₁₀ Plan for the Owens Valley Planning Area,¹⁴ the GBUAPCD and City of Los Angeles have worked consistently to refine and optimize the complex set of control measures leading to substantial reductions of PM₁₀ from the dry Owens Lakebed and surrounding near-lake sources. Decades of work by the GBUAPCD and the City of Los Angeles culminated in the District's adoption and the EPA's approval of Rule 433, "Control of Particulate Emissions at Owens Lake," into the SIP in 2016.¹⁵ Rule 433 requires the City of Los Angeles to implement dust control measures, including shallow flooding, managed vegetation, and application of gravel on designated areas of Owens Lake.¹⁶ The implementation of these dust control measures has led to more than a 90 percent decrease in emissions from Owens Lake¹⁷ and significant improvement in the air quality in the CJPA.¹⁸

On May 19, 2010, the EPA determined that the CJPA had attained the 24-hour PM₁₀ NAAQS.¹⁹ The determination was based on complete, quality-assured, and certified ambient air monitoring data that showed the area monitored attainment of the PM₁₀ NAAQS during

2006–2008.²⁰ On September 3, 2010, the EPA finalized approval of the submitted "2010 PM₁₀ Maintenance Plan and Redesignation Request for the Coso Junction Planning Area" ("2010 Maintenance Plan") and redesignated the CJPA to attainment, effective October 4, 2010.²¹ This redesignation was based on EPA's review of the 2010 Maintenance Plan, air quality monitoring data, and other relevant materials that satisfied all requirements for redesignation of the CJPA to attainment, pursuant to CAA sections 107(d)(3)(E) and 175A. Additionally, the maintenance plan was approved as it was consistent with applicable CAA provisions and EPA guidance.

GBUAPCD is a monitoring organization within the CARB Primary Quality Assurance Organization. GBUAPCD operates the PM₁₀ monitoring network in the CJPA. GBUAPCD submits annual monitoring network plans to the EPA that describe the monitoring network operated by GBUAPCD within the CJPA and discuss the status of the air monitoring network, as required under 40 CFR 58.10.²² The EPA regularly reviews these annual plans for compliance with the applicable reporting requirements in 40 CFR part 58. With respect to PM₁₀, the EPA has found that GBUAPCD's network plans meet the applicable reporting requirements for the area under 40 CFR part 58, appendix D.²³ GBUAPCD annually certifies that the data it submits to AQS are complete and quality-assured.²⁴

The District operates one PM₁₀ monitoring station for the CJPA. The monitoring station is located near the State of California Coso Junction rest area in Rose Valley.²⁵ The monitoring site is a designated SLAMS and collects hourly PM₁₀ data in accordance with 40 CFR parts 50, 53, and 58.

²⁰ Id.

²¹ 75 FR 54031.

²² The most recent annual network plan was submitted via email dated April 26, 2022, from Chris Howard, GBUAPCD, to Gwen Yoshimura, EPA Region IX, Subject: "Great Basin Unified APCD Ambient Air Monitoring Data Certification for 2021," with attachment.

²³ For example, see letter dated December 19, 2022, from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Phillip Kiddoo, Air Pollution Control Officer, GBUAPCD.

²⁴ See email dated April 26, 2022, from Chris Howard, GBUAPCD, to Gwen Yoshimura, EPA Region IX, Subject: "Great Basin Unified APCD Ambient Air Monitoring Data Certification for 2021," with attachment.

²⁵ See Figure 3 in the Coso Junction Second Maintenance Plan.

¹² For the history of Owens Lake and its impact on the CJPA, see 75 FR 36023 (June 24, 2010).

¹³ 64 FR 34173 (June 25, 1999).

¹⁴ 82 FR 13390 (March 13, 2017).

¹⁵ 81 FR 95473 (December 28, 2016).

¹⁶ GBUAPCD Rule 433, "Control of Particulate Emissions at Owens Lake," adopted April 13, 2016.

¹⁷ 75 FR 36023.

¹⁸ The number of monitored and expected exceedances at the Rose Valley monitoring station in the CJPA has dropped from a high of 12 exceedances per year to the value of 1 per year, excluding exceptional events, in 2020. See Table 2 in the Coso Junction Second Maintenance Plan for a summary of exceedances from 1985 through 2020.

¹⁹ 75 FR 27944.

⁷ For PM₁₀, a complete year of air quality data includes all four calendar quarters with each quarter having valid data on a minimum of 75 percent of the scheduled PM₁₀ sampling days. 40 CFR part 50, appendix K, section 2.3(a).

⁸ 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; and 40 CFR part 58, appendices A, C, D, and E.

⁹ 52 FR 29383 (August 7, 1987).

¹⁰ 67 FR 50805 (August 6, 2002).

¹¹ For a description of the geographic boundaries of the CJPA, see 40 CFR 81.305.

C. Air Quality in the Coso Junction Planning Area

While the CJPAs has had annual average PM₁₀ concentrations of less than 20 µg/m³ over the past 10 years, the PM₁₀ monitoring data within the CJPAs includes 17 exceedances of the standard recorded during 2010–2020, as detailed in Table 1 of the Coso Junction Second Maintenance Plan.²⁶ Since the submittal of the Plan, an additional three exceedances occurred in 2021; these exceedances occurred on September 19, September 27, and October 11.

On September 1, 2022, the District and CARB submitted a document titled,

“Discussion of Coso Junction Federal PM₁₀ Exceedances Not Requested for Exclusion from the NAAQS, 2010 through 2021,” (“Exceedance Discussion”).²⁷ The Exceedance Discussion documents the District’s response to the exceedances that were not requested for exclusion as exceptional events between the years of 2010 and 2021. For exceedances that occurred before the adoption of the Coso Junction Second Maintenance Plan by the State on September 23, 2021, the District implemented its contingency plan as outlined in Section 5.1 of the 2010 Maintenance Plan. Exceedances

that occurred after September 23, 2021, were subject to the contingency plan described in Section 7 of the Coso Junction Second Maintenance Plan, and in Section V.E of this document. Details of the subsequent investigations and District actions taken are outlined in Table 3 of the Exceedance Discussion and are consistent with the language of both the 2010 Maintenance Plan and the Coso Junction Second Maintenance Plan.²⁸ Table 1 of this document lists the exceedances that occurred, the source of the exceedance, and the action taken by the District.

TABLE 1—EXCEEDANCES IN COSO JUNCTION FROM 2010 THROUGH 2021

Exceedance date	Source of exceedance	District course of action
2/8/2011	North wind: regional event	2010 Maintenance Plan contingency provisions triggered. Phase 7a and Phase 8 dust controls ordered and implemented on Owens Lake.
11/30/2011	North wind: regional event	2010 Maintenance Plan contingency provisions triggered. Phase 7a and Phase 8 dust controls ordered and implemented on Owens Lake.
12/1/2011	North wind: regional event compounded by Owens Lake emissions, notably Phase 8 pre-gravel.	2010 Maintenance Plan contingency provisions triggered. Phase 7a and Phase 8 dust controls ordered and implemented on Owens Lake.
3/6/2012	West wind: local sources	Not requested for exclusion as an Exceptional Event. No local sources identified as requiring control. No contingency provisions triggered.
8/7/2013	West wind: flash flood deposits	Requested for exclusion as Exceptional Event; the EPA deferred review.
9/25/2013	West wind: flash flood deposits	Requested for exclusion as Exceptional Event; the EPA deferred review.
2/16/2014	West wind: flash flood deposits	Requested for exclusion as Exceptional Event; the EPA deferred review.
4/25/2014	West wind: flash flood deposits	Requested for exclusion as Exceptional Event; The EPA deferred review.
12/31/2014	North wind: regional event, compounded by sources south of Owens Lake.	No Owens Lake or other sources identified as requiring control. No contingency provisions triggered.
11/16/2016	West wind: local sources	Utilized existing District regulations, including District Rule 401, to ensure compliance with local sources.
3/31/2017	North wind: regional event	2010 Maintenance Plan contingency provisions triggered. District enforced timeline for ordered Owens Lake BACM construction and implementation. District continued to monitor, evaluate emissions from Owens Lake and surrounding areas.
7/29/2017	Local sources: paving operations ^a	District took enforcement action to bring the local emissive stationary source into compliance under District Rule 401. No additional actions or contingency provisions required.
12/20/2017	West wind: local sources	Utilize existing District regulations, including District Rule 401, to ensure compliance with local sources. No additional contingency provisions triggered.
2/11/2018	West wind: local sources	Utilize existing District regulations, including District Rule 401, to ensure compliance with local stationary sources. No additional contingency provisions triggered.
9/2/2019	Regional windblown dust: local sources	Not requested for exclusion as an Exceptional Event at this time due to mixed source contributions. Health advisories issued per District Rule 701 and the 2018 Coso Junction Exceptional Event Mitigation Plan.
9/7/2020	Creek Fire/SQF Complex wildfire smoke	Exceptional Event demonstration submitted and concurred on by the EPA.
9/8/2020	Creek Fire/SQF Complex wildfire smoke followed by regional windblown dust.	Not requested for exclusion as an Exceptional Event at this time due to mixed source contributions. Health advisories issued per District Rule 701 and the 2018 Coso Junction Exceptional Event Mitigation Plan.
9/19/2021	Windy Fire/KNP Complex wildfire smoke	The District submitted request for exclusion from contingency measure trigger calculation; the EPA concurred.
9/27/2021	Windy Fire/KNP Complex wildfire smoke	The District submitted request for exclusion from contingency measure trigger calculation; the EPA concurred.
10/11/2021	West Wind: local sources	The District took enforcement action to bring the source into compliance under existing District rules and regulations including District Rule 401. No additional contingency provisions triggered.

^a AQS information qualifier code “J-construction.”

Source: Exceedance Discussion, Table 1 and Table 3.

²⁶ Coso Junction Second Maintenance Plan, Appendix A includes the daily average PM₁₀ monitor readings from the CJPAs and surrounding monitor stations for every day from January 1, 2010, to December 31, 2020.

²⁷ Submitted via email on September 1, 2022 from Sylvia Vanderspek, CARB, to Gwen Yoshimura, EPA Region IX, Subject: “FW: Coso Junction Initial Notification Forms for 2nd PM₁₀ MP Contingency.” with attachments.

²⁸ Id., attachment titled “Discussion of PM₁₀ Exceedances at Coso Junction 2010 through 2021.pdf.”

1. Exceedances in the Coso Junction Planning Area

The District requested exclusion of 5 of the 17 exceedances due to exceptional events as defined in section 319(b) of the Act and its implementing regulations, referred to herein as the Exceptional Events Rule.²⁹ The Exceptional Events Rule defines an exceptional event as an event and its resulting emissions that the EPA determines affects air quality in such a way that there is a clear causal relationship between the event and a monitored exceedance (or violation) that is not reasonably controllable or preventable. Such events can be natural (for example, high winds or wildfires) or can be caused by human activity that is unlikely to recur.³⁰

On May 3, 2016, the District submitted an initial notification of intent (INI) form to request exclusion under the Exceptional Events Rule for exceedances that occurred on four days: August 7, 2013, September 25, 2013, February 16, 2014, and April 25, 2014.³¹ The EPA deferred review of the data from these events because we did not anticipate the events will affect any future regulatory decision.³²

On August 24, 2021, CARB submitted a demonstration for a wildfire smoke PM₁₀ exceptional event for an exceedance recorded on September 7, 2020, at the CJPA monitoring station.³³ The demonstration includes a narrative conceptual model of the event that describes the event-specific characteristics, evidence showing the exceedance was not reasonably controllable or preventable, and evidence of the clear causal relationship between the wildfire smoke event and the exceedance flagged as an exceptional event.

The EPA reviewed the documentation that CARB and the District developed to

demonstrate that the exceedance on September 7, 2020, meets the criteria for an exceptional event under the Exceptional Events Rule. As conveyed in the EPA's concurrence letter, we concurred that, based on the weight of evidence, the September 7, 2020 exceedance was caused by exceptional events due to the Creek Fire in the Sierra National Forest and the SQF Complex wildfire in the Sequoia National Forest.³⁴ Accordingly, the EPA determined that the monitored exceedances associated with this exceptional event should be excluded from use in determinations of exceedances and violations, including the evaluation of whether the Coso Junction PM₁₀ nonattainment area has maintained the standard.

Shortly before the State submitted the Coso Junction Second Maintenance Plan, three additional exceedances of the PM₁₀ NAAQS were recorded on September 19, 2021, September 27, 2021, and October 11, 2021. The District has submitted INI forms and additional supporting information for two of the three exceedances and the EPA has reviewed this information as discussed further in Section I.C.2 of this document.³⁵

2. Design Value in the Coso Junction Planning Area

Based on a review of air quality data during the three-year period covered by the Plan (2018–2020), excluding the exceedance flagged by CARB and GBUAPCD and concurred with by the EPA as an exceptional event, we find that the 2020 design value for the Coso Junction PM₁₀ nonattainment area is 1.0 and therefore is consistent with maintenance of the standard.

As discussed in Section I.C.1 of this document, in 2021 there were three additional exceedances of the PM₁₀ NAAQS in the area. These additional exceedances in 2021 caused the number of exceedances recorded at the air monitor averaged over three consecutive

years (*i.e.*, 2019–2021) to be greater than 1.05. The District and CARB provided information to the EPA about the six exceedances that occurred in 2019–2021 that explained that three of the exceedances were not within the State's or the District's control.³⁶ The information CARB and the District provided indicates that the September 7, 2020, September 19, 2021, and September 27, 2021 exceedances were all caused by wildfire smoke. The EPA has reviewed the information provided by the State regarding the 2019–2021 exceedances, and we agree that this information does not call into question the EPA's proposed action herein to approve the Coso Junction Second Maintenance Plan as providing for maintenance of the PM₁₀ NAAQS.³⁷

II. California's State Implementation Plan Submittal

In California, CARB is the state agency responsible for the adoption and submission to the EPA of California SIPs and SIP revisions, and it has broad authority to establish emissions standards and other requirements for mobile sources. Local and regional air pollution control districts in California are responsible for the regulation of stationary sources and are generally responsible for the development of air quality plans. In the portion of Inyo County that contains the CJPA, GBUAPCD develops and adopts air quality plans to address CAA planning requirements applicable to the CJPA. Such plans are then submitted to CARB for adoption and submittal to the EPA as revisions to the California SIP.

On October 21, 2021, CARB submitted the “Coso Junction PM₁₀ Planning Area Second 10-Year Maintenance Plan (July 2019)” (“Coso Junction Second Maintenance Plan” or “the Plan”) for the 1987 24-hour PM₁₀ NAAQS.³⁸ The Coso Junction Second Maintenance Plan includes a demonstration that the area is expected to remain in attainment for the PM₁₀ NAAQS through the last year of the second 10-year maintenance period, through 2030. If approval of this plan is finalized, the maintenance period for the CJPA will end on October 4, 2030, along with the conformity requirements for this area.

²⁹ 72 FR 13560 (March 22, 2007); revised 81 FR 68216 (October 3, 2016).

³⁰ 40 CFR 50.1.

³¹ Email dated May 3, 2016, from Chris Lanane, Air Monitoring Specialist, GBUAPCD, to Randall Chang, EPA Region IX. Subject: “Fwd: Exceptional Event Documentation for Coso Junction,” with attachment.

³² Email dated June 1, 2016, from Meredith Kurpius, EPA Region IX, to Chris Lanane, GBUAPCD, and Theresa Najita, CARB. Subject: “Coso Junction PM₁₀ High Wind Exceptional Events.”

³³ Email dated August 24, 2021, from Clawson Candance, CARB, to Michael Benjamin, CARB. Subject: “CARB letter to EPA GBUAPCD PM₁₀ NEE signed, EPA Cvr Ltr—2021 2nd Maint. Plan-EE Submittal-2021073 signed and GBUAPCD Exceptional Event Demonstration September 7 2020 FINAL,” with three attachments. While submitted by CARB, the demonstrations and addendums were developed through a joint effort by CARB and the GBUAPCD.

³⁴ Email dated July 12, 2022, from Anna Mebust, EPA Region IX, to Sylvia Vanderspek, CARB. Subject: “EPA Concurrence on 2020 PM₁₀ Wildfire Exceptional Event,” with attachments, “DD_Concurrence Letter.pdf.”

³⁵ “CosoJunctionWildfirePM₁₀_ConcurrenceTSD.pdf.”
³⁶ Submitted via email on September 1, 2022, from Sylvia Vanderspek, CARB to Gwen Yoshimura, EPA Region IX. Subject: “FW: Coso Junction Initial Notification Forms for 2nd PM₁₀ MP Contingency,” with attachments, “INI 2010–2020 Coso Junction PM₁₀.pdf,” “Discussion of PM₁₀ Exceedances at Coso Junction 2010 through 2021.pdf,” “INI 2021 Coso Junction PM₁₀.pdf,” and “Coso Junction 2021 Wildfire Smoke Exceedances.pdf.” For INI forms, see attachment “INI 2021 Coso Junction PM₁₀.pdf” and for additional information documenting the District's claim, see “Coso Junction 2021 Wildfire Smoke Exceedances.pdf.”

³⁷ Id.

³⁸ Letter dated November 14, 2022, from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Sylvia Vanderspek, Branch Chief, CARB, titled, “Re: EPA Response to Coso Junction initial Notification Forms for 2nd PM₁₀ MP Contingency, September 1, 2022.”

³⁹ Letter dated October 20, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX (submitted electronically October 21, 2021).

III. Procedural Requirements for Adoption and Submittal of State Implementation Plan Revisions

CAA sections 110(a)(1) and (2) and section 110(l) require states to provide reasonable notice and opportunity for public hearing prior to adoption and submission of a SIP or SIP revision. To meet these procedural requirements, every SIP submission should include evidence that the state provided adequate public notice and an opportunity for a public hearing consistent with the EPA's implementing regulations in 40 CFR 51.102.

CARB's October 21, 2021 SIP submittal package includes documentation of the public processes used by the District and CARB to adopt the Coso Junction Second Maintenance Plan.³⁹ As documented in the submittal package, on May 28, 2021, the District published a notice in the *Tahoe Daily Tribune*, a newspaper in general circulation in South Lake Tahoe, that a public hearing to consider adoption of the Plan would be held on July 1, 2021.⁴⁰ This same notice was republished by the District on May 29, 2021, in *The Sheet* and in *The Inyo Register*, newspapers in general circulation in Mono and Inyo counties, respectively.⁴¹ As documented in GBUAPCD Resolution No. 2021–04 included in the SIP revision submittal package, the Governing Board of the GBUAPCD adopted the Coso Junction Second Maintenance Plan on July 1, 2021, following the public hearing.⁴² CARB published on its website a notice of public hearing to be held on September 23, 2021, to consider adoption of the Plan.⁴³ As evidenced by CARB Resolution 21–19, CARB adopted the Coso Junction Second Maintenance Plan on September 23, 2021, following a public hearing.⁴⁴ Based on documentation included in the October 21, 2021 SIP revision submittal package,

³⁹ In this package, CARB submitted an unsigned version of its "Notice of Public Meeting to Consider Coso Junction PM₁₀ Maintenance Plan SIP Submittal." On December 28, 2022, the EPA received a signed and dated copy of this document from the District. Both documents are included in the docket for this action.

⁴⁰ "Notice of Public Hearing Adoption and Approval of 2021 Coso Junction PM₁₀ Planning Area Second 10-Year Maintenance Plan," Phillip L. Kiddoo, Air Pollution Control Officer, GBUAPCD.

⁴¹ Id.

⁴² GBUAPCD, "B/O #210701–05," dated July 1, 2021, attested by Tori DeHaven, Clerk of the Board.

⁴³ "Notice of Public Meeting to Consider Coso Junction PM₁₀ Maintenance Plan SIP Submittal," Richard W. Corey, Executive Officer, CARB. Available at: <https://ww2.arb.ca.gov/sites/default/files/2021-09/cosojunctionpm10sipnotice.pdf>.

⁴⁴ Proposed agenda dated September 23, 2021, "Coso Junction PM₁₀ Planning Area Second 10-Year Maintenance Plan, Resolution 21–19," CARB.

both the District and CARB have satisfied the applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submission of the Plan. Therefore, the submission of the Coso Junction Second Maintenance Plan meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and in 40 CFR 51.102.

IV. Requirements for Second 10-Year Maintenance Plans

Section 175A of the CAA provides the general framework for maintenance plans. The initial 10-year maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, including any additional control measures necessary to ensure such maintenance. In addition, maintenance plans are to contain contingency provisions necessary to ensure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the state will implement all control measures contained in the nonattainment SIP prior to redesignation.

Section 175A(b) of the CAA requires states to submit a subsequent maintenance plan revision ("second 10-year maintenance plan") eight years after redesignation. The Act requires only that this second 10-year maintenance plan maintain the applicable NAAQS for 10 years after the expiration of the first 10-year maintenance plan. Beyond these provisions, section 175A of the CAA does not define the content of a second 10-year maintenance plan.

The primary guidance on maintenance plans and redesignation requests is a 1992 memorandum from John Calcagni, titled "Procedures for Processing Requests to Redesignate Areas to Attainment" ("Calcagni Memo").⁴⁵ The Calcagni Memo outlines the key elements of a maintenance plan, which include an attainment emissions inventory, maintenance demonstration, monitoring and verification of continued attainment, and a contingency plan.

Maintenance plan submittals are SIP revisions, and therefore, the EPA is obligated under CAA section 110(k) to approve them or disapprove them depending upon whether they meet the

⁴⁵ Memorandum dated September 4, 1992, from John Calcagni, Director, Air Quality Management Division, EPA, to EPA Regional Office Air Division Directors, Subject: "Procedures for Processing Requests to Redesignate Areas to Attainment."

applicable CAA requirements for such plans.

V. Evaluation of the Coso Junction Second Maintenance Plan

A. Emissions Inventories Overview

A maintenance plan for the PM₁₀ NAAQS should include an inventory of direct PM₁₀ emissions in the area.⁴⁶ The inventory should be consistent with the EPA's most recent guidance on emissions inventories for nonattainment areas available at the time; must be comprehensive, including emissions from stationary point sources, area sources, and mobile sources; and must be based on actual emissions during the appropriate season, if applicable.⁴⁷

The specific PM₁₀ emissions inventory requirements are set forth in the Air Emissions Reporting Requirements rule,⁴⁸ which requires that emissions inventories report filterable and condensable components, as applicable.⁴⁹ The EPA has provided additional guidance for developing PM₁₀ emissions inventories in "PM₁₀ Emissions Inventory Requirements," EPA-454/R-94-033 (September 1994) and "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations" (May 2017).

The Coso Junction Second Maintenance Plan includes inventories for total primary PM₁₀ for the years 2008 (the base year of the first maintenance period), 2020 (the base year of the second maintenance period), and 2030 (the final year of the second maintenance period) as summarized in Table 2 of this document and further detailed in Appendix C of the Plan.⁵⁰

⁴⁶ PM₁₀ precursor emissions should also be included depending upon the contribution of secondary particulate matter to high ambient PM₁₀ concentrations in the area. In this instance, an inventory of PM₁₀ precursor emissions is not required because PM₁₀ precursor controls were not relied upon to achieve attainment of the PM₁₀ NAAQS in the CJA nor are they relied upon to demonstrate maintenance of the NAAQS (see Coso Junction Second Maintenance Plan, sections 2 and 4, and 75 FR 36023, 36027). While not required, the CARB Staff Report submitted with the Coso Junction Second Maintenance Plan includes inventories of NO_x, SO_x, ROG, and ammonia in Inyo County for 2008, the base year of the first maintenance plan, and for 2030, the horizon year for the Coso Junction Second Maintenance Plan ("Table 1. Inyo County Annual Average Day PM₁₀ and Precursor Emissions (ton/day)").

⁴⁷ CAA section 172(c)(3).

⁴⁸ 40 CFR part 51, subpart A.

⁴⁹ 40 CFR 51.15(a)(1)(vii). The primary emissions source in the CJA is windblown dust. Therefore, reporting condensable components of PM₁₀ was not applicable in this plan.

⁵⁰ Coso Junction Second Maintenance Plan, Appendix C consists of an email memorandum dated June 9, 2021, from Emily Weissinger and Julia

The 2020 emissions inventory represents current emissions and was used to project emissions through 2030, as discussed further in Section I.B of this document. CARB and the District developed the PM₁₀ emissions inventories based on the methods and assumptions presented in detail in Appendix C of the Plan and summarized herein.

The District forecasts that the PM₁₀ precursors nitrogen oxides (NO_x), sulfur oxides (SO_x), volatile organic compounds (VOCs),⁵¹ and ammonia will decline in Inyo County from 2008 to 2030; however, this small decline does not influence attainment.⁵² As discussed in Section 4 of the Plan, the emissions estimates from windblown dust from open areas constitute over 98 percent of the PM₁₀ emissions inventory for 2020 and 2030. Due to the nature of exceedances in the CIPA, the Coso Junction maintenance demonstration is based entirely on emissions of directly emitted PM₁₀ pollution. Thus, the EPA review focuses on direct PM₁₀ emissions estimates and does not include an in-depth analysis of the District's emissions estimates for PM₁₀ precursor emissions.

The emissions inventories in the Plan include PM₁₀ estimates from all source categories the District deems relevant *i.e.*, stationary sources, entrained dust from vehicle travel, windblown dust from unpaved roads, windblown dust from open areas, and mobile sources.⁵³ The District did not include windblown dust sources within the CIPA in the previous 2010 Maintenance Plan inventories because it considered the dust from Owens Lake to be a natural source, and the inventory was designed to include only emissions from anthropogenic sources. The District included this source in the inventories for the Coso Junction Second Maintenance plan due to the magnitude of the source of windblown dust contribution to current inventories.⁵⁴

Lester, Ramboll US Consulting, Inc., to Ann Logan, GBUAPCD, Subject: "24-Hour PM₁₀ Emissions Inventory for the 2nd Maintenance Plan for the Coso Junction Planning Area, Inyo County, California." Appendix C provides emission analyses for the years 2020–2030.

⁵¹ Some California air quality plans use the term reactive organic gases (ROG) instead of VOC. The terms cover essentially the same compounds, and herein we use the term VOC.

⁵² See CARB Staff Report Table 1, "Inyo County Annual Average Day PM₁₀ and Precursor Emissions (tons/day)."

⁵³ Coso Junction Second Maintenance Plan, Section 4, "Emissions Inventory."

⁵⁴ See CARB Staff Report, "Attainment Year Emission Inventory." Windblown dust accounts for 98.2 percent of the current emissions inventories.

1. Stationary Sources

As discussed in Section 4.1 and Appendix C of the Coso Junction Second Maintenance Plan, the District used information in District and federal Title V permit files as well as reporting from facilities to develop direct PM₁₀ emissions estimates for stationary point sources. The District calculated daily annual average values by dividing the total annual estimated PM₁₀ emissions from each site by 365 days.⁵⁵ There are five stationary sources that emit an annual average of at least 50 pounds of PM₁₀ per day located within the CIPA: Coso Energy Developers, Twin Mountain Rock Venture, China Lake Naval Air Weapons Station, Southwest Pumice, LLC, and Bowman Asphalt, Inc.⁵⁶

The District does not expect a significant increase in stationary source emissions through 2030 because 97 percent of the land in the CIPA is federally controlled and little of the remaining land is undeveloped and/or zoned for commercial or industrial uses needed for substantial stationary source operation. Consequently, the District concludes new stationary sources are unlikely to be built in the CIPA. Additionally, the District observes that the construction of any major sources or major modifications to existing facilities will be subject to the District's new source review rules, although it notes it has no knowledge of any planned expansions in the existing stationary source facilities.⁵⁷ Finally, the District notes that new minor sources or sources that wish to undergo minor modifications must obtain District Permits to Operate, which include provisions to ensure protection of and compliance with the NAAQS.

2. Re-Entrained Road Dust

Fugitive emissions from re-entrained dust from vehicle travel result when dust on roadways is disturbed by vehicle activity and re-entrained into the air. The District calculated dust emissions generated from paved and unpaved roads separately.⁵⁸

⁵⁵ Unpaved road and haul road emissions for permitted sources are included in the daily emissions for each facility.

⁵⁶ These sources are listed in descending order of annual averages of PM₁₀ emissions in pounds per day and are the following: 289 pounds per day, 235 pounds per day, 191 pounds per day, 185 pounds per day, and 86 pounds per day of PM₁₀, respectively.

⁵⁷ GBUAPCD Rule 209–A, "Standards for Authorities to Construct" (adopted May 12, 1993) and Rule 216, "New Source Review Requirements for Determining Impact on Air Quality" (adopted March 10, 1976).

⁵⁸ For detailed explanations of the calculations for paved roads and unpaved roads, see Coso Junction

For paved roads, the District calculated emissions using CARB's California Emissions Projection Analysis Model (CEPAM) 2016v1.05 emissions inventory for paved road dust in Inyo County, as described in Section 4.2 and Appendix C of the Plan.⁵⁹ Using the method described in Appendix C, the District used geographic information systems to determine that 6.5 percent of the total paved road length in Inyo County is located within the CIPA.⁶⁰ This factor was applied to the Inyo County emissions data obtained from CEPAM to estimate the PM₁₀ dust emissions resulting from paved roads within the CIPA.

Estimated PM₁₀ emissions from re-entrained road dust from unpaved roads is based on an adjusted emissions factor calculated by the methodology in the EPA's Compilation of Air Pollution Emission Factors, AP–42, Section 13.2.2 and is described in detail in Section 4.2 and Appendix C of the Plan.⁶¹ The District applied the adjusted emissions factor of 0.76 pounds per vehicle miles traveled to estimated vehicle traffic on unpaved roads to calculate emissions.⁶²

3. Windblown Dust

Windblown dust is generated when wind moves across open areas and unpaved roads and can contribute to ambient PM₁₀. Potential windblown dust emissions from all unpaved roads and open areas across the CIPA were estimated to determine its contribution to ambient PM₁₀, consistent with other planning areas in Inyo County.

The District applied an emission factor to the estimated area of unpaved roads within the CIPA to estimate emissions from windblown dust from unpaved roads.⁶³ The methodology is

Second Maintenance Plan, Section 4.2 and Appendix C.

⁵⁹ CEPAM2016v1.05 was the most recent version of the CEPAM model available during SIP development and when the SIP was submitted in 2021. It has since been updated to CEPAM 2019 v1.03.

⁶⁰ Coso Junction Second Maintenance Plan, Appendix C, Figure 1 and Figure 2.

⁶¹ EPA, "AP–42, Fifth Edition Compilation of Air Pollutant Emissions Factors, Volume 1: Stationary Point and Area Sources, Section 13.2.2 Unpaved Roads," November 2006.

⁶² Vehicle traffic on unpaved roads was calculated assuming an average of 2 trips per day along 50 miles of regularly traveled unpaved public roads in the CIPA, consistent with the 2010 Maintenance Plan. This assumption is reasonable considering the sparse population of the CIPA and that most of the unpaved roads are located on federally controlled land where access and development are restricted. Coso Junction Second Maintenance Plan, p. 17.

⁶³ Coso Junction Second Maintenance Plan, Appendix C. An emission factor of 0.0241 tons/acre/year for "barren" land uses was applied to the unpaved roadway area of the estimated 675 miles

Continued

described in the District's 2010 technical memorandum and is consistent with other SIPs in Inyo County, such as the 2016 Owens Valley Planning Area PM₁₀ State Implementation Plan, ("2016 Owens Valley SIP").⁶⁴

Windblown dust emissions from open areas vary with the category of land use, with some surfaces more emissive than others. The land use types with the potential to emit PM₁₀ in the CIPA are developed or urban areas, shrublands, forests, and barren land. The District estimated the area of each of these land use types using the 2011 National Land Cover Database and adjusted the total to remove acreage related to unpaved roads, as these are emissions that are already accounted for.⁶⁵ Emission factors for each land use type were multiplied by the acreages of the corresponding land use type.⁶⁶ This methodology is described in detail in

Appendix C of the Plan, and is consistent with other SIPs in Inyo County, such as the 2016 Owens Valley SIP.⁶⁷

4. Mobile Sources

The District calculated emissions from on-road mobile sources, which include tailpipe emissions, tire wear, and brake wear using CARB's EMFAC2017 model for Inyo County.⁶⁸ The District further estimated emissions generated within the CIPA by adjusting the total Inyo County emissions by the same factor used to calculate re-entrained road dust from paved roads (6.5 percent).⁶⁹

The category of off-road mobile sources includes planes, trains, and farm and construction equipment and was estimated for the entirety of Inyo County at 0.017 tons per day using CEPAM.⁷⁰ Approximately half of these county level emissions were identified

as resulting from commercial aircraft. The CIPA has no commercial airports or identified agricultural acreage. Therefore, off-road mobile sources for the CIPA were excluded as negligible from this inventory, and not included in the analysis for maintenance.

5. Emissions Summary

Based on the emission estimates for the year 2020 as shown in Table 2 of this document, the District finds that windblown dust from open areas accounts for over 98 percent of total PM₁₀ emissions in CIPA.⁷¹ The second highest source of emissions comes from stationary sources, which contribute 1.3 percent of the total PM₁₀ emissions in the CIPA. Windblown dust from unpaved roads, entrained dust from vehicle travel, and mobile source emission, together contribute less than 0.5 percent of the total PM₁₀ emissions.⁷²

TABLE 2—COSO JUNCTION PM₁₀ EMISSION INVENTORY, 2008, 2020, 2030
[Annual average, tpd]

Emissions source	2008	2020	2030
Stationary Sources	0.64	0.49	0.49
Entrained Dust from Vehicle Travel	0.09	0.06	0.06
Mobile Sources	0.01	0.01	0.01
Total	0.74	0.56	0.56
Windblown dust—unpaved roads .....	.....	0.11	0.11
Windblown dust—Open Areas .....	.....	36.34	36.34
Total including windblown dust .....	.....	37.01	37.01

Source: Coso Junction Second Maintenance Plan, Table 4 and Appendix C.

Totals may not add up due to rounding.

The 2010 Maintenance plan did not include windblown dust in the Plan's emissions inventory. The missing values are represented here with a hyphen.

Due to the sparse population of the CIPA, and the fact that over 97 percent of land in this maintenance area is federally controlled and operated, the District concludes that future projected growth of emissions and population in the CIPA is unlikely and would be limited in scope.⁷³ The majority of unpaved roads and open areas within

the CIPA are located on federally controlled lands, where access and development are limited to the public.⁷⁴ In addition, any substantive development on federal lands is subject to general conformity requirements under District Regulation XIII.⁷⁵ Due to these reasons, the District has determined that emissions in the CIPA

will remain relatively constant over the 2020–2030 maintenance period.

The EPA believes the selection of the 2020 base year inventory is appropriate given that it is the most recent emissions inventory associated with the triennial reporting schedule required under the Air Emissions Reporting Requirements rule. Moreover,

of unpaved roads in the CIPA, with an assumed roadway width of 20 feet.

⁶⁴ See 81 FR 89407, 89411 (December 12, 2016) and GBUAPCD technical memorandum dated May 3, 2010, "Unpaved Road Dust Inyo County (Revised)."

⁶⁵ Available at <https://data.nal.usda.gov/dataset/national-land-cover-database-2011-nlcd-2011#:~:text=National%20Land%20Cover%20Database%202011%20%28NLCD%202011%29%20is,across%20the%20United%20States%20from%202001%20to%202011>. Since the submission of this plan, newer landcover products became available, however no significant differences were observed within the CIPA when comparing the newer landcover data to the 2011 landcover data.

⁶⁶ Emission factors for urban areas, shrublands, forest, and barren land are 0.0001, 0.0272, 0.0034, and 0.0241 respectively.

⁶⁷ See 81 FR 89407, 89411.

⁶⁸ EMFAC is short for EMISSION FACTOR. The EPA approved EMFAC2017 for SIP development and transportation conformity purposes in California on August 15, 2019. 84 FR 41717. EMFAC2017 was the most recently approved version of the EMFAC model that was available at the time of preparation of the Coso Junction Second Maintenance Plan.

⁶⁹ Coso Junction Second Maintenance Plan, Appendix C, Table 6.

⁷⁰ CEPAM2016v1.05 was the most recent version of the CEPAM model available during SIP development and when the SIP was submitted in 2021. It has since been updated to CEPAM 2019 v1.03.

⁷¹ Coso Junction Second Maintenance Plan, Table 4, "Emissions Inventory Summary for the Coso Junction PM₁₀ Planning Area."

⁷² Windblown dust from unpaved road contributes 0.29 percent (0.11 tons/day), entrained dust from vehicle travel contributes 0.16 percent (0.06 tons/day), and mobile sources contribute 0.02 percent (0.01 ton/day) of the total PM₁₀ emissions in the CIPA.

⁷³ The 2020 US census showed a population of 241 people living in the CIPA, approximately 1.3 percent of the 17,900 people living in Inyo County. While this number did grow from the 2010 US Census of 64 people, the population remains a small portion of Inyo County. Further population growth is also limited by the lack of land available for development.

⁷⁴ Coso Junction Second Maintenance Plan, Appendix C, Figure 2.

⁷⁵ GBUAPCD, Regulation XIII, "General Conformity," adopted October 5, 1994.

preparation of an annual average daily inventory, as opposed to a seasonal or episodic inventory, is appropriate given that elevated PM₁₀ concentrations in CJPA do not exhibit a clear seasonal or episodic pattern. Based on our review of the documentation provided with the plan, we are proposing to find that the 2020 emissions inventory for direct PM₁₀ is based on reasonable assumptions and methodologies, and that the inventory is comprehensive, current, accurate, and consistent with applicable CAA provisions and the Calcagni Memo, and are therefore proposing that the 2020 inventory is acceptable for use in demonstrating maintenance of the PM₁₀ NAAQS.

B. Maintenance Demonstration

Section 175A(a) of the CAA requires that the maintenance plan “provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.” A state may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by conducting modeling that shows that the future mix of sources and emissions rates will not cause a violation of the NAAQS.⁷⁶ Projected emissions inventories for future years must account for, among other things, the ongoing effects of economic growth and adopted emissions control requirements, and the inventories are expected to be the best available representation of future emissions. The plan submission should include documentation explaining how the state calculated the emissions data for the base year and projected inventories.

In the Coso Junction Second Maintenance Plan, the District demonstrates continued maintenance of the PM₁₀ NAAQS by projecting the direct PM₁₀ emissions in the area through 2030 and showing that future emissions of PM₁₀ will not exceed the level of the attainment inventory. As discussed in Section V.A of this document, the Plan includes emissions inventories representing actual emissions in 2020 (the Plan’s base year) and projected emissions through 2030 (the final year of the second maintenance period) for sources in the CJPA.⁷⁷

The District derived projected inventories by applying expected

growth trends for each source category based on data that reflect historical trends, current conditions, and recent economic and demographic forecasts with expected emissions reductions resulting from adopted control measures to the base year inventory. For the Coso Junction Second Maintenance Plan, emission methodologies used in the 2010 Maintenance Plan were reviewed by the District and updated as appropriate to generate emissions for this Plan. Appendix C of the Plan documents the methods and assumptions used to develop the emissions projections upon which the maintenance demonstration relies and presents the detailed source category-specific estimates for each of the analysis years.

As discussed in Section I.B of this document, the emissions reductions from Owens Lake were the primary factor leading to attainment for the CJPA, and Owens Lake is the paramount source of emissions that must be addressed to ensure maintenance for the area.⁷⁸ District Rule 433, “Control of Particulate Emissions at Owens Lake,”⁷⁹ provides a federally enforceable regulatory mechanism to ensure continued success of the established dust control strategy on Owens Lake, and ensures that emissions from Owens Lake do not cause or contribute to exceedances in the CJPA.⁸⁰

For these reasons, and due to the unique nature of the CJPA, the EPA believes that the District’s determination that the total daily emissions of PM₁₀ from sources within the CJPA will remain constant at 37.01 tons per day from 2020 through 2030 is reasonable. We agree that the projected emissions inventories for direct PM₁₀ for years 2020 through 2030 are based on reasonable methods, growth factors, and assumptions, and are based on the most current and accurate information available to CARB and GBUAPCD at the time the Plan and its inventories were being developed. We also agree that the Coso Junction Second Maintenance Plan provides an adequate basis to demonstrate maintenance of the PM₁₀ NAAQS within the CJPA through 2030. Consequently, we are proposing to approve the Plan because it demonstrates maintenance of the PM₁₀ NAAQS for more than 10 years after the expiration of the first 10-year maintenance plan, in accordance with section 175A(b) of the CAA.

⁷⁸ 75 FR 36023, 36030.

⁷⁹ Rule 433 was adopted by GBUAPCD on April 13, 2016, and approved by EPA on December 28, 2016 (81 FR 95473).

⁸⁰ Coso Junction Second Maintenance Plan, Section 6.1 and Appendix D.

C. PM₁₀ Air Quality Monitoring Network

After an area has been redesignated, the state should continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.⁸¹

As discussed in Section I.B of this document, GBUAPCD monitors ambient concentrations of PM₁₀ in the CJPA near the State of California Coso Junction Rest Area in the Rose Valley.⁸² In Section 10 of the Coso Junction Second Maintenance Plan, the District commits to continue to operate and maintain a PM₁₀ ambient air quality monitor in the CJPA in accordance with 40 CFR parts 50, 53, and 58 to verify the attainment status of the area. The monitoring will also allow the District to notify the public during air pollution episodes as provided for in District Rule 701, “Air Pollution Episode Plan” and in the District’s 2018 Exceptional Events Mitigation Plan for the CJPA.⁸³ Data collected by the monitoring network are also needed to implement the contingency provisions of the maintenance plan. We are proposing that the Coso Junction Second Maintenance Plan contains adequate provisions for continued ambient PM₁₀ monitoring to verify continued attainment through the full maintenance period, ending on October 4, 2030.

D. Verification of Continued Attainment

The EPA recommends that the state verify continued attainment through methods in addition to the ambient air monitoring program, e.g., through periodic review of the factors used in development of the attainment inventory to show no significant change.⁸⁴ GBUAPCD commits to review the emissions inventory inputs on an annual basis and, if the District finds that these inputs have changed significantly, to request that CARB update the existing inventory and to compare the revised inventory with the inventories in the Coso Junction Second Maintenance Plan.⁸⁵ Additionally, the District commits to updating its calculated three-year design value for the CJPA annually. This design value will also be included in the annual network monitoring plan submitted to the EPA to confirm the area continues to meet the PM₁₀ NAAQS. We are proposing to find that the District’s

⁸¹ Calcagni Memo, p. 11.

⁸² AQS Site No. 06–027–1001.

⁸³ GBUAPCD, Rule 701, “Air Pollution Episode Plan,” adopted March 3, 2014.

⁸⁴ Calcagni Memo, p. 11.

⁸⁵ Coso Junction Second Maintenance Plan, Section 11.

⁷⁶ Calcagni Memo, pp. 9–11.

⁷⁷ Coso Junction Second Maintenance Plan, Section 4 and Appendix C.

commitments are acceptable to verify continued attainment of the PM₁₀ NAAQS.

E. Contingency Provisions

Section 175A(d) of the CAA requires that maintenance plans include contingency provisions, as the EPA deems necessary, to promptly correct any violations of the NAAQS that occur after redesignation of the area. Such provisions must include a requirement that the state will implement all measures with respect to the control of the relevant air pollutants that were contained in the SIP for the area before redesignation of the area as an attainment area. These contingency provisions are distinguished from contingency measures required for nonattainment areas under CAA section 172(c)(9) in that they are not required to be fully adopted measures that will take effect without further action by the state for the maintenance plan to be approved. However, the contingency provisions of a maintenance plan are an enforceable part of the SIP and should ensure that contingency measures are adopted expeditiously once they are triggered. The maintenance plan should clearly identify the measures to be adopted, include a schedule and procedure for adoption and implementation of the measures, and contain a specific timeline for action by the state. In addition, the state should identify the specific indicators or triggers that will be used to determine when the contingency measures need to be implemented.

The District has adopted a contingency plan to address possible future PM₁₀ air quality problems in the CJPA. The contingency plan is detailed in Section 7 of the Plan. As noted by the District in the Plan, contingency provisions are typically implemented when air quality deteriorates beyond a specified level, such as a certain number of exceedances of the standard or a violation of the standard. In this case, the contingency provisions will be triggered if an exceedance of the federal PM₁₀ standard is monitored within the CJPA.⁸⁶

The contingency plan also includes a screening process that allows the District and CARB, subject to the EPA's review, to exclude exceedances from the trigger calculation if the agencies collectively determine that information developed by the District is sufficient to support exclusion. The purpose of the

screening process is to differentiate between exceedances that are not within the District or State control (*i.e.*, exceedances that occur despite the implementation of reasonable measures), and exceedances that are within the District's or State's control and should be included in the trigger calculation. It is important to note that, should the District or State exclude an exceedance from the contingency trigger calculation using this process, it would not constitute the EPA's concurrence that the exceedance was caused by an exceptional event. The exceedance will therefore continue to be included in design value calculations for the CJPA unless CARB, following opportunity for public comment, submits a request for the EPA to concur on the exceedance as an exceptional event pursuant to 40 CFR 50.14, and the EPA reviews the submittal and formally concurs.

If an exceedance occurs, the District will start the screening process to investigate the cause of the exceedance within 60 days following the end of the calendar quarter during which the event occurred. An exceedance determined by the District to be caused by or significantly contributed to by emissions from the Owens Lake area would trigger contingency measures, as outlined in Section 7.1, "Owens Valley Planning Area Contingency Measures," of the Coso Junction Second Maintenance Plan. In brief, the District will investigate the exceedance within 60 days of the end of the calendar quarter in which it occurred to determine whether the required control measures on Owens Lake were properly implemented in accordance with District Rule 433 or if the emissions are from a new source on Owens Lake.⁸⁷ For exceedances found to be caused by dust from existing dust control areas, the District will order corrective actions no more than 18 months after the 60 day period of investigation. Exceedances found to be caused by dust from a new source on Owens Lake will be subject to the contingency provisions under section C of District Rule 433. Mitigation of emissions from uncontrolled areas of Owens Lake will be addressed as expeditiously as possible by the District under the legal constraints of the 2014 Stipulated

⁸⁷ District Rule 433, "Control of Particulate Emissions at Owens Lake," contains contingency measures for the Owens Valley Planning Area and provides the following: clearly identified control measures, a schedule and procedure for adoption and implementation of the measures, a time limit in which to take action, and an established threshold that triggers the contingency measures. See Coso Junction Second Maintenance Plan, Appendix D.

Judgement, the 2016 Owens Valley SIP, and District Rule 433.⁸⁸ Additionally, at least once per year, the District will make an additional best available control measure contingency determination to evaluate if uncontrolled areas on the Owens Lakebed or implemented controls are not sufficient to mitigate emissions to attain the NAAQS in the Owens Valley Planning Area.

An exceedance determined to be caused by emissions from sources located within the CJPA would trigger the contingency provisions outlined in Section 7.2, "Additional Contingency Measures," of the Coso Junction Second Maintenance Plan. Following the end of the calendar quarter in which the exceedance occurs, the District will investigate the cause of the exceedance within 60 days. Exceedances found to be caused by emissions from local sources already subject to District regulations will be promptly addressed no more than 18 months after the 60-day period of investigation.⁸⁹ If the exceedance cannot be addressed through existing District rules and regulations and is not covered by the EPA Exceptional Events Policy, the District will adopt and implement additional control measures necessary to meet and maintain the NAAQS within 18 months after the 60 day period of investigation. Control measures could include expanding existing rules or utilizing measures from outside existing rules and regulations to achieve the necessary emissions reductions within 18 months.

Within 60 days of the end of each calendar quarter, the District will provide a list of exceedances that occurred during that previous quarter to CARB, identify those exceedances that the District believes to be exceedances that are not within the District's or State's control, and flag the relevant data and provide an initial description in AQS.

If the District seeks to exclude an exceedance from the contingency measures trigger calculation, the District will notify CARB and the EPA by submitting an INI. The EPA, CARB, and the District will confer to determine whether additional information should be submitted along with the INI. The District will submit the INI and any additional requested information to CARB and the EPA for review. After review, CARB and the EPA will notify

⁸⁸ The EPA approved District Rule 433 into the California SIP on December 27, 2016 (81 FR 95473).

⁸⁹ Table 5 in the Coso Junction Second Maintenance Plan lists existing District rules and regulations to control sources of PM₁₀.

⁸⁶ An exceedance of the PM₁₀ NAAQS is determined when the number of exceedances at the monitor, averaged over three years, is greater than 1.05.

the District if the Agencies agree that the exceedance appears to be an uncontrollable event and therefore will not be counted towards the contingency measure trigger calculation, or if the Agencies determine that the exceedance was likely caused by an exceptional event and that the District must include the event in the contingency measure trigger calculation. If the District still considers the event in question to be exceptional, the District may then opt to submit a full Exceptional Events Demonstration.

Based on our review of the Coso Junction Second Maintenance Plan, as summarized herein, we propose to find that the contingency provisions of the Plan clearly identify specific contingency measures, contain a triggering mechanism to determine when contingency measures are needed, contain a description of the process of recommending and implementing contingency measures, and contain specific and appropriate timelines for action. We also propose to find that the contingency trigger screening process, including the associated EPA review, is reasonably designed to distinguish between exceedances that are not within the District or State control, and exceedances that are within the District's or State's control and for which new or tightened control measures might be effective. Thus, we propose to conclude that the contingency plan in the Coso Junction Second Maintenance Plan is adequate to ensure correction of any violation of the PM₁₀ NAAQS that occurs after redesignation, as required by section 175A(d) of the CAA.

F. Motor Vehicle Emissions Budgets for Transportation Conformity

Section 176(c) of the CAA requires federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) cause or contribute to violations of the NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Transportation actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with

state and local air quality and transportation agencies, the EPA, FHWA, and FTA to demonstrate that an area's regional transportation plans and transportation improvement programs conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets ("budgets") contained in submitted or approved control strategy SIPs and maintenance plans.⁹⁰

However, an isolated rural area does not have an MPO and is not required to prepare transportation plans or transportation improvement programs. Therefore, in isolated rural areas such as the CIPA, conformity is determined only when a nonexempt FHWA or FTA project needs approval or funding.⁹¹

Control strategy SIPs and maintenance plans typically set budgets for criteria pollutants and/or their precursors to address pollution from cars and trucks. Budgets are generally established for specific years and specific pollutants or precursors. PM₁₀ maintenance plan submittals should identify budgets for transportation-related PM₁₀ emissions in the last year of the maintenance period.⁹²

Section 93.109(f) of EPA's transportation conformity regulation (40 CFR part 93) states that an area is not required to satisfy a regional emissions analysis for a pollutant if the EPA finds that motor vehicle emissions of that pollutant are an insignificant contributor to the area's air quality problem. To make this demonstration, the submitted SIP would have to show that it would be unreasonable to expect that the area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Factors to consider in such a demonstration include the percentage of motor vehicle emissions in the context of the total attainment

plan inventory; the current state of air quality as determined by monitoring data for that NAAQS; the absence of SIP motor vehicle control measures; and historical trends and future projections of the growth of motor vehicle emissions.

In our rulemaking approving the 2010 Maintenance Plan for the CIPA, the EPA found the contribution of motor vehicles to be an insignificant source of PM₁₀ to the CIPA.⁹³ As part of the Coso Junction Second Maintenance Plan, GBUAPCD requested that the EPA find that on-road emissions of PM₁₀ are insignificant for conformity purposes, and therefore the District did not submit any motor vehicle emissions budgets. The EPA is proposing to approve GBUAPCD's insignificance demonstration for the on-road motor vehicle contribution of PM₁₀ emissions to the overall PM₁₀ emissions in the Coso Junction Second Maintenance Plan. Additionally, in this notice, the EPA is initiating the adequacy review process for this insignificance finding. The EPA invites the public to comment on the adequacy of this insignificance finding as well as other actions the EPA is proposing in this notice.

This insignificance finding is based on the following consideration of the factors identified in the EPA's transportation conformity regulations, as discussed in sections 4 and 8 of the Coso Junction Second Maintenance Plan, and on the unique circumstances of the CIPA.

1. The Percentage of Motor Vehicle Emissions in the Context of the Total SIP Inventory

The District calculated the percentage of on-road motor vehicle emissions by adding together direct emissions from on-mobile source emissions,⁹⁴ entrained dust from vehicle travel on paved roads, and entrained dust from vehicle travel on unpaved roads, and dividing the sum by the total PM₁₀ emissions including windblown dust. These values can be found in Table 2 of this notice. On-road mobile emissions constitutes less than 0.2 percent of the PM₁₀ emissions inventory in the CIPA.⁹⁵ The District attributes this to the low population of the CIPA.

2. The Coso Junction Planning Area Is Attaining the PM₁₀ NAAQS

As discussed in Section 3 of the Coso Junction Second Maintenance Plan and

⁹⁰ Control strategy SIPs refer plans that contain specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment. 40 CFR 93.101.

⁹¹ 40 CFR 93.109(g).

⁹² Transportation-related emissions of VOC and NO_x must also be specified in PM₁₀ maintenance plans if the EPA or the state find that transportation-related emissions of one or both of these precursors within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and the U.S. Department of Transportation (DOT), or the applicable SIP (or SIP revision submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment, or maintenance strategy. 40 CFR 93.102(b)(2)(iii). Neither of these conditions apply to the Coso Junction PM₁₀ maintenance area.

⁹³ 75 FR 54031.

⁹⁴ Direct emissions from vehicle exhaust tire wear and brake wear comprised this source category and accounted for 0.010 tpd of the CIPA PM₁₀ emissions inventory.

⁹⁵ Coso Junction Second Maintenance Plan, p. 25.

in Section I.C.2 of this document, the 2018–2020 PM₁₀ monitoring data show that the CJPAs are in attainment of the PM₁₀ NAAQS. The District observes that this current state of air quality coincides with the improvements in the Owens Valley area as emissions from Owens Lake have been mitigated over time, and notes that these continual improvements in air quality have resulted in annual average PM₁₀ concentrations of less than 20 µg/m³ over the past ten years.

3. Motor Vehicle Control Measures Were Not Adopted for the Purpose of Bringing the Area Into Attainment

As discussed in Section V.A of this document, the control measures relied upon in the Coso Junction Second Maintenance Plan are primarily related to windblown dust, which accounts for over 98 percent of the PM₁₀ emissions in the CJPAs. As discussed in Section 4 of the Coso Junction Second Maintenance Plan and in Section V.A of this notice, on-road mobile emissions in the CJPAs, including exhaust, tire wear, brake wear, and re-entrained road dust from paved and unpaved roads, make up less than 0.2 percent of the daily PM₁₀ emissions in the CJPAs.⁹⁶ There are currently no GBUAPCD adopted motor vehicle control measures specific to the CJPAs. Any national and statewide motor vehicle emission control measures that may apply would contribute to reductions in motor vehicle related PM₁₀ emissions in the CJPAs, which as noted previously, amount to less than 0.2 percent of the total PM₁₀ emissions inventory.

4. Historical Trends and Future Projections Indicate Motor Vehicle PM₁₀ Emissions Are Consistent Over Time

Historical on-road mobile emissions have constituted a tiny fraction of the overall PM₁₀ emissions inventory in the CJPAs.⁹⁷ The District attributes this to the low population of the CJPAs. Despite some population growth in the area, the population of the CJPAs occupies only 1.3 percent of the land area of Inyo County, and substantial population growth is limited by the high percentage of federally controlled land where access, development, or both are restricted.⁹⁸ For these reasons, the

District states that on-road mobile emissions can reasonably be expected to remain relatively small and unchanging over the 2020–2030 maintenance period.⁹⁹

Given these factors, we are proposing to find that motor vehicle-related PM₁₀ emissions are insignificant contributors to PM₁₀ in the CJPAs and that it would be unreasonable to expect that PM₁₀ emissions from motor vehicles would grow enough within the CJPAs to cause a violation of the PM₁₀ standard. If this insignificance finding is finalized as proposed, a regional emissions analysis would not be required for PM₁₀ in any future conformity determination for the 1987 PM₁₀ NAAQS in the CJPAs.¹⁰⁰ The EPA's insignificance finding should, however, be noted in any transportation conformity documentation that is prepared for this area. Areas with insignificant regional motor vehicle emissions for a pollutant or precursor are still required to make a conformity determination that satisfies other relevant conformity requirements such as fiscal constraint, timely implementation of transportation control measures, interagency consultation, and hot-spot analyses for projects, if required.

VI. Environmental Justice Considerations

The EPA performed and reviewed a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool ("EJSCREEN"). Our screening-level analysis included multiple environmental and demographic indicators, including the EJSCREEN "Demographic Index," which is the average of an area's percentage of minority and low-income populations. The Demographic Index for the southwest portion of Inyo County, which contains the CJPAs, is at the 52nd percentile, compared to the United States as a whole.¹⁰¹ The results of this analysis are being provided for informational purposes. The results of the demographic analysis indicate that, for populations within the CJPAs, the percentage of people of color (persons who reported their race as a category

people, and the 2020 U.S. Census reports 241 people. Despite the population growth, the population still represents less than 2 percent of Inyo County's population and is not expected to have a significant effect on on-road mobile emissions.

⁹⁹ See Coso Junction Second Maintenance Plan, Section 8.4.

¹⁰⁰ Upon the completion of the adequacy finding, conformity can be determined without a regional emissions analysis regardless of the finalization of the rest of the items proposed in this notice.

¹⁰¹ Coso Junction PM₁₀ NAA EJSCREEN Report, dated January 18, 2023.

other than White alone (not Hispanic or Latino)) is similar to the national average, both at 40 percent. The percent of people living below the poverty level in the CJPAs is 21 percent, which is lower than the national average of 30 percent.

This proposed action addresses a plan for continued maintenance of the 1987 PM₁₀ NAAQS for the CJPAs. Approval of this plan does not impose any additional regulatory requirements on sources beyond those imposed by state law. As discussed in this document, California has demonstrated that the CJPAs are attaining the 1987 PM₁₀ NAAQS and the Coso Junction Second Maintenance Plan provides for the maintenance of the NAAQS for the remainder of the maintenance period. At a minimum, this action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to maintain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

VII. Proposed Action and Request for Public Comment

Under CAA section 110(k)(3), and for the reasons set forth in this document, the EPA is proposing to approve the Coso Junction Second Maintenance Plan submitted electronically on October 21, 2021, by CARB, as a revision to the California SIP. We are proposing to approve the maintenance demonstration and contingency provisions as meeting all the applicable requirements for maintenance plans and related contingency provisions in CAA section 175A, and we are proposing an insignificance finding for motor vehicle emissions in the CJPAs. Additionally, the EPA is also initiating the adequacy process for this insignificance finding included in this SIP submission.

We are soliciting comments on these proposed actions and on the adequacy of the maintenance plan's demonstration that motor vehicle emissions are insignificant. We will accept comments from the public for 30 days following publication of this proposal in the **Federal Register** and will consider any relevant comments before taking final action or making an adequacy determination.

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable

⁹⁶ Table 6 in the Coso Junction Second Maintenance Plan provides specific breakdowns of each category.

⁹⁷ In the 2010 Maintenance Plan, on-road mobile emissions constituted less than 1 percent of the daily PM₁₀ emissions (12 of 1478 pounds of PM₁₀ per day), excluding windblown dust.

⁹⁸ According to the 2000 U.S. Census, 102 people lived in Pearsonville and Homewood Canyon, which are located at the southern end of the CJPAs. The 2010 U.S. Census reported a decrease to 61

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

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

In addition, there are no areas of Indian country within the CJPA, and the state plan for which the EPA is proposing approval does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Therefore, this proposed action does not have tribal implications and would not, if approved, impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address

"disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require an evaluation. EPA performed an environmental justice analysis, as is described above in the section titled, "Environmental Justice Considerations." The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: March 24, 2023.

Kerry Drake,

Acting Regional Administrator, Region IX.

[FR Doc. 2023-06578 Filed 3-29-23; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19, 42, and 52

[FAR Case 2018-003, Docket No. FAR-2018-0003, Sequence No. 1]

RIN 9000-AN61

Federal Acquisition Regulation: Credit for Lower-Tier Small Business Subcontracting

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; withdrawal.

SUMMARY: DoD, GSA, and NASA are withdrawing this proposed rule. The decision not to proceed with a final rule was made because the underlying statute has been changed. Accordingly, this proposed rule is withdrawn, and the FAR case is closed.

DATES: The proposed rule published on June 6, 2019, at 84 FR 30071, is withdrawn as of March 30, 2023.

ADDRESSES: Regulatory Secretariat Division (MVCB), 1800 F Street NW, 7th Floor, Washington, DC 20405, 202-501-4755.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Carrie Moore, Procurement Analyst, at 571-300-5917, or by email at carrie.moore@gsa.gov. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite "FAR Case 2018-003".

SUPPLEMENTARY INFORMATION:

I. Background

On June 6, 2019, DoD, GSA, and NASA proposed to amend the FAR to implement section 1614 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014 (Pub. L. 113-66), as implemented by the Small Business Administration (SBA) in its final rule published on December 23, 2016, at 81 FR 94246. SBA's final rule and section 1614 address credit for lower-tier small business subcontracting. On December 19, 2022, SBA published a proposed rule at 87 FR 77529 to amend its regulations to implement section 870 of the NDAA for FY 2020 (Pub. L. 116-92),

which amended the requirements set forth in section 1614 of the NDAA for FY 2014. Section 870 of the NDAA for FY 2020 made three changes that require SBA to change some of the provisions set forth in its December 2016 final rule as follows: (1) A prime contractor may elect, in some instances, to receive credit toward its subcontracting plan for lower-tier subcontracts to small businesses; (2) Agencies are prohibited from setting tier-specific goals for prime contractors that use lower-tier credit; and (3) Subcontracting plans are required to recite the records that contractors will maintain to substantiate lower-tier credit.

Because of the statutory changes made since the proposed rule was issued in 2019, the FAR Council believes further consideration of any amendments to the FAR related to credit for lower-tier subcontracting should be accomplished under a new FAR case. Accordingly, the proposed rule published on June 6, 2019, at 84 FR 30071 is withdrawn and FAR Case 2018–003 is closed. Section 1614 of the NDAA for FY 2014, as amended by section 870 of the NDAA for FY 2022, will be implemented via a new FAR case.

List of Subjects in 48 CFR Parts 19, 42, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2023–06172 Filed 3–29–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230320–0079]

RIN 0648–BM09

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2023

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes Federal management measures for the 2023

summer flounder, scup, and black sea bass recreational fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of this action is to set management measures that allow the recreational fisheries to achieve, but not exceed, the recreational harvest targets and thereby prevent overfishing of the summer flounder, scup, and black sea bass stocks.

DATES: Comments must be received by April 14, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0019 by the following method:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2023–0019 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281–9116, or Emily.Keiley@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage summer flounder, scup, and black sea bass. The Council and the Commission’s Management Boards meet jointly each year to recommend recreational management measures. For summer flounder and black sea bass, we must implement coastwide measures or approve conservation-equivalent measures per 50 CFR 648.102(d) and 648.142(d), as soon as possible following the Council and Commission’s recommendation. This action proposes establishing conservation equivalency for both

species in 2023. For scup, we are proposing adjustments to the Federal recreational season and possession limit.

Recreational Management Measures Process

This is the first time a new approach for developing recreational summer flounder, scup, and black sea bass recreational management measures will be used. The new process, part of Framework Adjustment 17 to the Summer Flounder and Black Sea Bass Fishery Management Plan (FMP) and Framework Adjustment 6 to the Bluefish Fishery Management Plan (March 9, 2023, 88 FR 14499), referred to as the Percent Change Approach, which is a harvest control rule designed by the Council and Commission for use in managing Mid-Atlantic recreational fisheries, uses two factors to determine if management measures could remain status quo, could be liberalized, or must be restricted. These two factors are: (1) A comparison of a confidence interval (CI) around an estimate of expected harvest under status quo measures to the average recreational harvest limit (RHL) for the upcoming 2 years and; (2) biomass compared to the target level, as defined by the most recent stock assessment. These two factors also determine the appropriate degree of change, defined as a percentage change in expected harvest. Changes to recreational management measures to achieve the required percent change are evaluated by the Monitoring Committee consisting of representatives from the Commission, the Council, state marine fishery agencies from Massachusetts to North Carolina, and NMFS. The FMP limits the choices for the types of measures to: Minimum and/or maximum fish size; per angler possession limit; and fishing season. A description of the application of this process for each species is provided below.

The Council and the Board then consider the Monitoring Committee’s recommendations and any public comment in making their recommendations. The Council forwards its recommendations to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council’s recommendations to ensure that they are consistent with the targets specified for summer flounder, scup, and black sea bass in the FMP and all applicable laws and Executive Orders before ultimately implementing measures for Federal waters. Commission measures are final at the time they are adopted.

Scup Recreational Management Measures

Application of the Percent Change Approach and the bio-economic model

used to evaluate recreational behavior and catch resulted in a recommended 10-percent reduction in scup harvest in 2023. This is because scup has a very

high biomass (more than 150 percent of the target level), and harvest under status quo measures is expected to be above the 2023 RHL.

TABLE 1—ESTIMATED 2023 SCUP HARVEST, ASSOCIATED CONFIDENCE INTERVAL (CI), 2023 RHL, STOCK SIZE CATEGORY, AND RESULTING PERCENT CHANGE RECOMMENDED FOR 2023

Estimated harvest under status quo measure	80-Percent confidence interval	2023 RHL	Stock size category	Recommended percent change
14.31 million lb (6,490 mt)	9.90–17.40 million lb (4,490–7,892 mt)	9.27 million lb (4,204 mt)	Very High	10-Percent Reduction.

The current Federal recreational scup management measures are a 10-inch (25.4-cm) minimum fish size, a 50-fish per person possession limit, and a year-round open season. State measures are similar but vary slightly due to differences in scup availability. The proposed Federal recreational scup management measures are a 40-fish per person possession limit, and an open season from May 1–December 31. No changes to the minimum size are being proposed. The proposed Federal measures, in conjunction with changes to state waters measures are projected to achieve the needed 10-percent harvest reduction.

Summer Flounder and Black Sea Bass Conservation Equivalency

Under conservation equivalency, Federal recreational measures are waived and federally permitted party/charter vessels and all recreational vessels fishing in Federal waters are subject to the recreational fishing measures implemented by the state in which they land. This approach allows for more customized measures at a state or regional level that are likely to meet the needs of anglers in each area, compared to coastwide measures that may be advantageous to anglers in some areas and unnecessarily restrictive in others. The combination of state or regional measures must be “equivalent” in terms of conservation to a set of “non-preferred coastwide measures,” which are recommended by the Council and the Board each year.

The Council and Board annually recommend that either state- or region-specific recreational measures be developed (conservation equivalency) or that coastwide management measures be implemented. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of non-preferred coastwide measures that would apply if conservation equivalency is not approved for use in Federal waters.

When conservation equivalency is recommended, and following confirmation by the Commission that

the proposed state or regional measures developed through its technical and policy review processes achieve conservation equivalency, NMFS may waive, for the duration of the fishing year, the permit condition found at 50 CFR 648.4(b) that requires Federal permit holders to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted summer flounder and black sea bass charter/party permit holders and individuals fishing for summer flounder and black sea bass in the exclusive economic zone (EEZ) are subject to the recreational fishing measures implemented by the state in which they land, rather than the coastwide measures. Conservation equivalency expires at the end of each fishing year (December 31).

In addition, the Council and the Board must recommend precautionary default measures when recommending conservation equivalency. The Commission would require adoption of the precautionary default measures by any state that either does not submit a management proposal to the Commission’s Technical Committee or that submits measures that are not conservationally equivalent to the coastwide measures.

The development of conservation-equivalency measures happens both at the Commission and at the individual state level. The selection of appropriate data and analytical techniques for technical review of potential state conservation-equivalent measures, and the process by which the Commission evaluates and recommends proposed conservation-equivalent measures, are wholly a function of the Commission and its individual member states. Individuals seeking information regarding the process to develop specific state or regional measures or the Commission process for technical evaluation of proposed measures should contact the marine fisheries agency in the state of interest, the Commission, or both.

Once the states and regions select their final 2023 summer flounder and black sea bass management measures through their respective development, analytical, and review processes and submit them to the Commission, the Commission will conduct further review and evaluation of the submitted proposals, ultimately notifying NMFS as to which proposals have been approved or disapproved. NMFS has no overarching authority in the development of state or Commission management measures but is an equal participant along with all the member states in the review process. NMFS neither approves nor implements individual states’ measures but retains the final authority either to approve or to disapprove the use of conservation equivalency in place of the coastwide measures in Federal waters. The final combination of state and regional measures will be detailed in a letter from the Commission to the Regional Office certifying that the combination of state and regional measures have met the conservation objectives under Addendum XXXII to the Commission’s Interstate FMP. NMFS will publish its determination on 2023 conservational equivalency as a final rule in the **Federal Register** following review of the Commission’s determination and any other public comment on this proposed rule.

Summer Flounder Recreational Management Measures

This action proposes adopting conservation equivalency for summer flounder in 2023. For 2023, the non-preferred coastwide measures approved by the Council and Board are an 18-inch (45.72-cm) minimum fish size; 3-fish per person possession limit; and an open season from May 15–September 22. Compared to 2022, this is a decrease in the non-preferred minimum size from 18.5-inches to 18-inches (45.72-cm to 48.26-cm) total length; a 1-fish reduction of the possession limit; and an increase in the season length. The coastwide measures become the default management measures in the

subsequent fishing year, in this case 2024, until the joint process establishes either coastwide or conservation-equivalency measures for the next year.

The 2023 precautionary default measures recommended by the Council and Board are identical to those in place for 2021 and 2022: A 20.0-inch (50.8-cm) minimum fish size; a 2-fish per person possession limit; and an open season of July 1–August 31. These measures may be assigned by the Commission if conservation equivalency is approved but a state or region does not submit a conservationally equivalent proposal.

Application of the Percent Change Approach and the bio-economic model used to evaluate recreational behavior and summer flounder catch, generated conflicting results depending on the

initial assumptions used in the model configuration, specifically with regard to the years selected for Marine Recreational Information Program (MRIP) data used to project the amount of catch per trip. When the most recent complete year of MRIP data (2021) was used, the model estimated harvest under status quo measures was 8.38 million lb (3,801 mt), below the 2023 RHL. When an average of 2018–2022 MRIP data was used to determine the catch per trip, the model estimated harvest was 10.92 million lb (4,953 mt), slightly above the 2023 RHL. While these estimates are not significantly different, because of the way the Percent Change Approach uses the estimates and confidence intervals, the recommended management action was different. The model run using only 2021 data resulted in a recommended

10-percent liberalization, and the model run using the 2018–2022 average resulted in a recommended 10-percent reduction in summer flounder harvest. Given the conflicting results, and uncertainty about which model run was more likely to reflect 2023 harvest, the Council and Board made some adjustments to the coastwide measures, but ultimately decided to maintain status quo measures at the state, and regional levels. We are proposing the Council and Board recommendation because it appears to be a legally sufficient solution given the conflicting results. This summer, additional work will be undertaken to evaluate the best configuration of the model for each species, which will reduce the likelihood of this scenario in the future.

TABLE 2—ESTIMATED 2023 SUMMER FLOUNDER HARVEST, ASSOCIATED CONFIDENCE INTERVAL (CI), 2023 RHL, STOCK SIZE CATEGORY, AND RESULTING PERCENT CHANGE RECOMMENDED FOR 2023

Estimated harvest under status quo measure *	80-Percent confidence interval	2023 RHL	Stock size category	Recommended percent change
8.38 million lb (3,801 mt)	7.56–9.52 million lb (3,429–4,318 mt)	10.62 million lb (4,817 mt)	Low	10-Percent Liberalization.
10.92 million lb (4,953 mt)	9.23–12.94 million lb (4,186–5,869 mt)		Low	10-Percent Reduction.

* The same model was used to generate both of the above harvest estimates. The different estimates are produced when different assumptions are made about the input data.

Black Sea Bass Recreational Management Measures

This action proposes adopting conservation equivalency for black sea bass in 2023. The Council and Board recommended the following coastwide measures: A 15-inch (12.7-cm) minimum size; a 5-fish possession limit; and an open season of May 15–September 8. Compared to 2022, this is

a 1-inch (2.54-cm) increase to the minimum size and a 1-month reduction to the season length. The recommended precautionary default measures are a 16-inch (40.64-cm) minimum size; a 2-fish possession limit; and an open season of June 1–August 31.

Application of the Percent Change Approach and the bio-economic model used to evaluate recreational behavior and catch resulted in a recommended

10-percent reduction in black sea bass harvest in 2023. This is because black sea bass has a very high biomass (more than 150 percent of the target level), and harvest under status quo measures is expected to be above the 2023 RHL. Measures to be implemented by the states and/or regions are expected to achieve the 10-percent harvest reduction.

TABLE 3—ESTIMATED 2023 BLACK SEA BASS HARVEST, ASSOCIATED CONFIDENCE INTERVAL (CI), 2023 RHL, STOCK SIZE CATEGORY, AND RESULTING PERCENT CHANGE RECOMMENDED FOR 2023

Estimated harvest under status quo measure	80-Percent confidence interval	2023 RHL	Stock size category	Recommended percent change
7.93 million lb (3,597 mt)	7.17–8.63 million lb (3,252–3,915 mt)	6.74 million lb (3,057 mt)	Very High	10-Percent Reduction.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS finds that a 15-day comment period for this action provides a reasonable opportunity for public

participation in this action pursuant to Administrative Procedure Act section 553(c) (5 U.S.C. 553(c)), while also ensuring that the final recreational management measures are in place before the majority of recreational state fisheries open. Stakeholder and industry groups have been involved with the development of this action and have participated in public meetings throughout the past year. A prolonged comment period and subsequent potential delay in implementation past the start of the recreational fishing season would be contrary to the public interest, as it could create confusion

both in the recreational fisheries regarding the management measures, and with state agencies as they prepare and finalize their recreational management measures.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures.

Entities affected by this action include recreational for-hire operations holding Federal summer flounder, scup, or black sea bass party/charter permits.

Individual anglers and for-hire vessels that are only permitted to operate in state waters are not considered “small entities” under the Regulatory Flexibility Act (RFA) and thus economic impacts on private recreational anglers are not discussed here.

Vessel ownership data¹ were used to identify all individuals who own fishing vessels. Vessels were then grouped according to common owners. The resulting groupings were then treated as entities, or affiliates, for purposes of identifying small and large businesses that may be regulated by this action. A business primarily engaged in fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and has combined annual receipts not in excess of \$11 million, for all its affiliated operations worldwide.

A total of 655 affiliates had a Federal party/charter permit for summer flounder, scup, and or black sea bass during 2019–2021. All of these 655 affiliates were categorized as small businesses based on their average 2019–2021 revenues. Of these, 302 affiliates reported that the majority of their revenues in 2021 came from for-hire fishing. It is not possible to determine what proportion of their revenues came from fishing for an individual species. Nevertheless, given the popularity of summer flounder, scup, and black sea bass as recreational species, revenues generated from these species are likely important for many of these affiliates at certain times of the year.

Data on for-hire revenues associated with individual species are not available. The Northeast Fisheries Science Center (NEFSC) affiliate database suggests that the three year (2019–2021) average annual combined gross receipts for-hire fishing activity for all species combined for all affiliates that held Federal party/charter permits for summer flounder, scup, and/or black sea bass was \$46.95 million. Affiliates represent groupings of vessels with common owners. The contribution of summer flounder, scup, and black sea bass to these revenues is unknown.

Summer flounder, scup, and black sea bass are popular recreational species in the mid-Atlantic and southern New England, and revenues generated from these species are likely important for

many of these affiliates at certain times of the year. However, it is unlikely that they accounted for most of the \$49.65 million in for-hire revenues for the potentially impacted for-hire affiliates.

The entities affected by this action include recreational for-hire operations holding Federal summer flounder, scup, or black sea bass party/charter permits. For-hire revenues are impacted by a variety of factors, including regulations and demand for for-hire trips for summer flounder, scup, black sea bass, and other potential target species; weather; the economy; and other factors. In addition, under similar regulations, recreational harvest of these species is variable. Therefore, it is not possible to accurately quantify the economic impact of the status quo summer flounder regulations or the black sea bass or scup restrictions on for-hire revenues. However, it would generally be expected that for-hire revenues may be similar in 2023 in response to the summer flounder regulations remaining status quo, and slightly decrease in response to the black sea bass and scup reductions, assuming all other factors that impact revenues are unchanged.

Because this rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 24, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.104, revise paragraph (b) to read as follows:

§ 648.104 Summer flounder size requirements.

* * * * *

(b) *Party/charter permitted vessels and recreational fishery participants.* The minimum size for summer flounder

is 18-inches (45.72-cm) total length for all vessels that do not qualify for a summer flounder moratorium permit under § 648.4(a)(3), and charter boats holding a summer flounder moratorium permit if fishing with more than three crew members, or party boats holding a summer flounder moratorium permit if fishing with passengers for hire or carrying more than five crew members, unless otherwise specified in the conservation equivalency regulations at § 648.107. If conservation equivalency is not in effect in any given year, possession of smaller (or larger, if applicable) summer flounder harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.111 and abide by state regulations.

* * * * *

■ 3. In § 648.105, revise text to read as follows:

§ 648.105 Summer flounder recreational fishing season.

No person may fish for summer flounder in the EEZ from May 15 through September 22 unless that person is the owner or operator of a fishing vessel issued a commercial summer flounder moratorium permit, or is issued a summer flounder dealer permit, or unless otherwise specified in the conservation equivalency measures at § 648.107. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this recreational fishing season. This time period may be adjusted pursuant to the procedures in § 648.102. Possession of summer flounder harvested from state waters during this time is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.111 and abide by state regulations.

■ 4. In § 648.106, revise paragraph (a) to read as follows:

§ 648.106 Summer flounder possession restrictions.

(a) *Party/charter and recreational possession limits.* No person shall possess more than three summer flounder in, or harvested from, the EEZ, per trip unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit, or unless otherwise specified in the conservation equivalency measures at § 648.107. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit

¹ Affiliate data for 2019–2021 were provided by the NMFS NEFSC Social Science Branch. This is the latest affiliate data set available for analysis.

are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102. Possession of summer flounder harvested from state waters above this possession limit is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.111 and abide by state regulations.

* * * * *

■ 5. In § 648.107, revise paragraph (a) introductory text to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2023 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

■ 6. Revise § 648.127 to read as follows:

§ 648.127 Scup recreational fishing season.

Fishermen and vessels that are not eligible for a scup moratorium permit under § 648.4(a)(6), may possess scup from May 1 through December 31, subject to the possession limit specified in § 648.128(a). The recreational fishing season may be adjusted pursuant to the procedures in § 648.122. Should the recreational fishing season be modified, non-federally permitted scup vessels abiding by state regulations may transit with scup harvested from state waters on board through the Block Island Sound Transit Area following the provisions outlined in § 648.131.

■ 7. In § 648.128, revise paragraph (a) to read as follows:

§ 648.128 Scup possession restrictions.

(a) Party/Charter and recreational possession limits. No person shall possess more than 40 scup in, or harvested from, the EEZ per trip unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup

dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122. However, possession of scup harvested from state waters above this possession limit is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.131 and abide by state regulations.

* * * * *

■ 8. Revise § 648.146 as follows:

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a black sea bass moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from May 15 through September 8, unless otherwise specified in the conservation equivalent measures described in § 648.151 or unless this time period is adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters outside of this season is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations.

■ 9. In § 648.147, revise paragraph (b) to read as follows:

§ 648.147 Black sea bass size requirements.

* * * * *

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum fish size for black sea bass is 15 inches (38.1 cm) total length for all vessels that do not qualify for a black sea bass moratorium permit, and for party boats holding a black sea bass moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a black sea bass moratorium permit, if fishing with more than three crew members, unless otherwise specified in the conservation equivalent measures as described in § 648.151. However, possession of

smaller black sea bass harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations.

■ 10. Revise § 648.151 to read as follows:

§ 648.151 Black sea bass conservation equivalency.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2023 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§ 648.146, 648.147(b), and 648.145(a). This determination is based on a recommendation from the Black Sea Bass Board of the Atlantic States Marine Fisheries Commission.

(1) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels harvesting black sea bass in or from the EEZ and subject to the recreational fishing measures of this part, landing black sea bass in a state whose fishery management measures are determined by the Regional Administrator to be conservation equivalent shall not be subject to the more restrictive Federal measures, pursuant to the provisions of § 648.4(b). Those vessels shall be subject to the recreational fishing measures implemented by the state in which they land.

(2) [Reserved]

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing measures of this part, whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, size limits and possession limit prescribed in §§ 648.146, 648.147(b), and 648.145(a), respectively, due to the lack of, or the reversal of, a conservation-equivalent recommendation from the Black Sea Bass Board of the Atlantic States Marine Fisheries Commission shall be subject to the following precautionary default measures: Season—June 1 through August 31; minimum size—16 inches (40.64 cm); and possession limit—2 fish.

[FR Doc. 2023–06568 Filed 3–29–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 88, No. 61

Thursday, March 30, 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

Agricultural Marketing Service

[Doc. No. AMS–FGIS–23–0002]

Opportunities in 2023 for United States Grain Standards Act Designation in Jamestown, ND; Lincoln, Nebraska; Memphis, Tennessee; Topeka, KS; Cedar Rapids, IA; Minot, ND; Cincinnati, OH; Pocatello, ID; Evansville, IN; West Sacramento, CA and Richmond, VA; Intent To Certify Delegated Agencies Virginia Department of Agriculture and Consumer Services and Wisconsin Department of Agriculture

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: The United States Grain Standards Act (USGSA) designations of the official agencies listed in **SUPPLEMENTARY INFORMATION** below will end on the prescribed dates. The Agricultural Marketing Service (AMS) is seeking persons or governmental agencies interested in providing official services in the areas presently served by these agencies to apply for designation. Designation provides for private entities or state governmental agencies to be an integral part of the official grain inspection system (<https://www.ams.usda.gov/services/fgis/official-grain-inspection-weighing-system>). Designated agencies work under the supervision of the Federal Grain Inspection Service (FGIS) and are authorized to provide official inspection and weighing services in a defined geographic area. In addition, we request comments on the quality of services provided by the following designated agencies: Grain Inspection, Inc. (Jamestown); Lincoln Grain Inspection

Service, Inc. (Lincoln); Midsouth Grain Inspection Service (Midsouth); Kansas Grain Inspection Service, Inc. (Kansas); Mid-Iowa Grain Inspection, Inc. (Mid-Iowa); Minot Grain Inspection, Inc. (Minot); Tri-State Grain Inspection, Inc. (Tri-State); Idaho Grain Inspection Service, Inc. (Idaho); Ohio Valley Grain Inspection, Inc. (Ohio Valley); California Agri Inspection Co., Ltd. (California); and Virginia Department of Agriculture and Consumer Services (Virginia). AMS encourages submissions from traditionally underrepresented individuals, organizations, and businesses to reflect the diversity of this industry. AMS encourages submissions from qualified applicants, regardless of race, color, age, sex, sexual orientation, gender identity, national origin, religion, disability status, protected veteran status, or any other characteristic protected by law. AMS is also asking for comments on the quality of official services at export port locations provided by delegated state agencies Virginia Department of Agriculture and Consumer Services (Virginia) and Wisconsin Department of Agriculture (Wisconsin). AMS considers comments and other available information when determining certification.

DATES: Comments for delegated state agency Wisconsin must be received by May 1, 2023.

Applications and comments for areas of designation terminating on March 31, 2023, currently operated by Jamestown, Lincoln, and Midsouth must be received by May 1, 2023.

Applications and comments for areas of designation terminating on June 30, 2023, currently operated by Kansas, Mid-Iowa, Minot and Tri-State must be received between April 1, 2023, and April 30, 2023.

Applications and comments for areas of designation terminating on September 30, 2023, currently operated by Idaho and Ohio Valley must be received between July 1, 2023, and July 31, 2023.

Applications and comments for areas of designation terminating on December 31, 2023, currently operated by California and Virginia must be received

between October 1, 2023, and October 31, 2023.

Comments on the quality of official services at export port locations provided by delegated state agency Virginia must be received between October 1, 2023–October 31, 2023.

ADDRESSES: Submit applications and comments concerning this Notice using the following methods:

- *To apply for USGSA Designation:* You will need to obtain an FGISonline customer number (CIM) and create a USDA eAuthentication account at <https://www.eauth.usda.gov/eauth/b/usda/home> prior to applying. Then go to FGISonline at <https://fgisonline.ams.usda.gov/> and then click on the Delegations/Designations and Export Registrations (DDR) link. Applicants are encouraged to begin the designation application process early and allow time for system authentication.

- *To submit Comments Regarding Current Designated and/or Delegated Official Agencies:* Go to [Regulations.gov](https://www.regulations.gov) (<https://www.regulations.gov>). Instructions for submitting and reading comments are detailed on the site. All comments must be submitted through the Federal e-rulemaking portal at <https://www.regulations.gov> and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

Read Applications and Comments: If you would like to view the applications, please contact FGISQACD@usda.gov. All comments will be available for public viewing online at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: J. Ricardo Espitia, Compliance Officer, Federal Grain Inspection Service, AMS, USDA; Telephone: (202) 699–0246; or Email: FGISQACD@usda.gov.

SUPPLEMENTARY INFORMATION: The designations of the official agencies listed below will end on the prescribed dates:

Official agency	Headquarters location and telephone	Designation end	Applications/comments open period
Grain Inspection, Inc	Jamestown, ND, 701-252-1290 ..	3/31/2023	30 Days After Publication.
Lincoln Grain Inspection Service, Inc	Lincoln, NE, 402-435-4386	3/31/2023	30 Days After Publication.
Midsouth Grain Inspection Service	Memphis, TN, 901-942-3216	3/31/2023	30 Days After Publication.
Kansas Grain Inspection Service, Inc	Topeka, KS, 785-233-7063	6/30/2023	04/01/2023-04/30/2023.
Mid-Iowa Grain Inspection, Inc	Cedar Rapids, IA, 319-363-0239	6/30/2023	04/01/2023-04/30/2023.
Minot Grain Inspection, Inc	Minot, ND, 701-838-1734	6/30/2023	04/01/2023-04/30/2023.
Tri-State Grain Inspection, Inc	Cincinnati, OH, 513-251-6571	6/30/2023	04/01/2023-04/30/2023.
Idaho Grain Inspection Service, Inc	Pocatello, ID, 208-233-8303	9/30/2023	07/01/2023-07/31/2023.
Ohio Valley Grain Inspection, Inc	Evansville, IN, 812-423-9010	9/30/2023	07/01/2023-07/31/2023.
California Agri Inspection Co., Ltd	Sacramento, CA, 916-374-9700	12/31/2023	10/01/2023-10/31/2023.
Virginia Department of Agriculture and Consumer Services	Richmond, VA, 757-494-2455	12/31/2023	10/01/2023-10/31/2023.

Section 7(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)). A designated agency may provide official inspection service and/or Class X or Class Y weighing services at locations other than port locations. Under section 7(g) of the USGSA, designations of official agencies are effective for no longer than five years, unless terminated by the Secretary, and may be renewed according to the criteria and procedures prescribed in section 7(f) of the USGSA. See also, 7 CFR 800.196 for further information and guidance.

Additionally, the USGSA Section 7(e) (7 U.S.C. 79(e)), requires the Secretary of Agriculture (Secretary) to certify, every five years, that each State agency with a delegation of authority is meeting the criteria described for carrying out inspections on behalf of the Secretary. This certification process includes: (1) Publishing, in the **Federal Register**, a notice of intent to certify a State agency and provide a 30-day period for public comment; (2) evaluating the public comments received; and (3) conducting an investigation to determine whether the State agency is qualified. Findings must be based on public comments received and investigation conducted. Once concluded, USDA will publish a **Federal Register** notice announcing whether the certification has been granted, describing the basis on which the Secretary made the decision.

Designation Application Locations

The following list identifies the currently operating designated official agencies and the specific areas of operation for designation applications. These are listed in order of anticipated designation termination date.

Jamestown: Areas of designation include parts of North Dakota and Minnesota. Please see the April 18, 2018, issue of the **Federal Register** (83

FR 17138) for descriptions of the areas open for designation.

Lincoln: Areas of designation include parts of Iowa and Nebraska. Please see the September 05, 2017, issue of the **Federal Register** (82 FR 41913) for descriptions of the areas open for designation.

Midsouth: Areas of designation include parts of Arkansas, Mississippi, Tennessee, and Texas. Please see the September 05, 2017, issue of the **Federal Register** (82 FR 41911) for descriptions of the areas open for designation.

Kansas: Areas of designation include parts of Colorado, Kansas, Nebraska, and Wyoming. Please see the February 11, 2015, issue of the **Federal Register** (80 FR 7564) for descriptions of the areas open for designation.

Mid-Iowa: Areas of designation include parts of Iowa, Illinois, and Minnesota. Please see the February 10, 2020, issue of the **Federal Register** (85 FR 7527) for descriptions of the areas open for designation.

Minot: Areas of designation include parts of North Dakota. Please see the February 11, 2015, issue of the **Federal Register** (80 FR 7564) for descriptions of the areas open for designation.

Tri-State: Areas of designation include parts of Indiana, Kentucky, and Ohio.

- In Indiana: Dearborn, Decatur, Franklin, Ohio, Ripley, Rush (south of State Route 244), and Switzerland Counties.
- In Kentucky: Bath, Boone, Bourbon, Bracken, Campbell, Clark, Fleming, Gallatin, Grant, Harrison, Kenton, Lewis (west of State Route 59), Mason, Montgomery, Nicholas, Owen, Pendleton, and Robertson Counties.

- In Ohio: Bounded on the north by the northern Preble County line east; the western and northern Miami County lines east to eastern Miami County line; eastern Miami County line south to U.S. 36; U.S. 36 east to State Route 560; State Route 560 south to Valley Pike Road; Valley Pike Road south to the Clark County line; the northern Clark County line east to U.S. Route 68; bounded on

the east by U.S. Route 68 south to U.S. Route 22; U.S. Route 22 east to State Route 73; State Route 73 southeast to the Adams County line; the eastern Adams County line; bounded on the south by the southern Adams, Brown, Clermont, and Hamilton County lines; and bounded on the west by the western Hamilton, Butler, and Preble County lines.

Idaho: Areas of designation include parts of Idaho. Please see the July 01, 2015, issue of the **Federal Register** (80 FR 37581) for descriptions of the areas open for designation.

Ohio Valley: Areas of designation include parts of Indiana, Kentucky, and Tennessee. Please see the July 01, 2015, issue of the **Federal Register** (80 FR 37581) for descriptions of the areas open for designation.

California: Areas of designation include parts of the State of California. Please see the July 01, 2015, issue of the **Federal Register** (80 FR 37580) for descriptions of the areas open for designation.

Virginia: Areas of designation include the entire state of Virginia except export port locations within the state. Please see the July 01, 2015, issue of the **Federal Register** (80 FR 37580) for descriptions of the areas open for designation.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas of the official agencies specified above under the provisions of section 7(f) of the USGSA and 7 CFR 800.196. Designations in the specified geographic areas for Jamestown, Lincoln, and Midsouth will occur no sooner than April 1, 2023. Designations in the specified geographic areas for Kansas, Mid-Iowa, Minot and Tri-State will occur no sooner than July 1, 2023. Designations in the specified geographic areas for Idaho and Ohio Valley will occur no sooner than October 1, 2023. Designations in the specified geographic areas for California and Virginia will

occur no sooner than January 1, 2024. To apply for designation or to request more information on the geographic areas serviced by these official agencies contact FGISQACD@usda.gov.

Please note that sampling, weighing, and inspection services may be offered by designated agencies under the Agricultural Marketing Act of 1946 for other commodities under the auspices of FGIS through separate cooperative service agreements with AMS. The service area for such cooperative agreements mirrors the USGSA designation area. For further information, see 7 U.S.C. 1621 *et seq* or contact FGISQACD@usda.gov.

Areas of Delegation

Virginia

Pursuant to Section 7(e)(2) of the USGSA, the following export port locations in the State of Virginia are assigned to this State agency.

In Virginia: All export port locations in the State of Virginia.

Wisconsin

Pursuant to Section 7(e)(2) of the USGSA, the following export port locations in the State of Wisconsin are assigned to this State agency.

In Wisconsin: All export port locations in the State of Wisconsin.

Authority: 7 U.S.C. 71–87k.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–06642 Filed 3–29–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meeting Notice of the National Agricultural Research, Extension, Education, and Economics (NAREEE) Advisory Board, National Genetic Resources Advisory Council (NGRAC)

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, and the Agriculture Improvement Act of 2018, the United States Department of Agriculture (USDA) announces a meeting of the National Agricultural Research, Extension, Education, and Economics (NAREEE) Advisory Board, National Genetic Resources Advisory

Council (NGRAC), a subcommittee of NAREEE.

DATES: The National Agricultural Research Extension, Education, and Economics Advisory Board, National Genetic Resources Advisory Council will meet in person on April 11–12, 2023.

Public Participation/Oral Comments: This meeting is open to the public. Interested individuals may participate in-person or via internet. To attend the meeting via Zoom and/or make oral comments, you must contact Ms. Michele Simmons at email: nareee@usda.gov at least 5 business days prior to the meeting (no later than April 4, 2023). Members of the public will be heard in the order in which they sign up.

Written Comments: The public may file written comments no later than April 4, 2023. Written comments from the public may be submitted via email at nareee@usda.gov to the attention of Ms. Michele Simmons.

All statements will become a part of the official record of the NAREEE Advisory Board and will be kept on file for public review in the NAREEE Advisory Board's Office. Written comments by attendees and other interested stakeholders will be welcomed for the public record before and up to two weeks following the Board meeting (no later than 5 p.m. eastern standard time on Wednesday, April 26, 2023).

ADDRESSES: The meeting will take place in person at the USDA National Laboratory for Genetic Resources Preservation, 1111 South Mason St., Fort Collins, CO 80521.

A link for virtual participation will be provided for those unable to attend the meeting in person.

Web Preregistration: Participants wishing to virtually participate should preregister by email at nareee@usda.gov to the attention of Ms. Michele Simmons. A meeting link will be sent out to pre-registered guests.

FOR FURTHER INFORMATION CONTACT: Ms. Kate Lewis, Executive Director/ Designated Federal Official, or Ms. Michele Simmons, Program Support Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 579–6610 or email: nareee@usda.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the meeting: for members to discuss the future recommendations this Council will provide to the Secretary of Agriculture and to the National Genetic Resources Program

(NGRP), part of USDA's Agricultural Research Service, on new and innovative approaches to genetic resources conservation. Topics to be discussed may include actions and policies for the collection, maintenance, and utilization of genetic resources; and the review of genetic resources plans of several domestic and international organizations.

An agenda for this two-day meeting may be received by sending an email to the attention of Ms. Michele Simmons at nareee@usda.gov.

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by planning and scheduling difficulties.

Dated: March 27, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–06614 Filed 3–29–23; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Renewing Burden Number 0584–0293

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public and other public agencies to comment on this proposed information collection. This is a revision to a currently approved collection, to prevent a lapse in OMB approval of data collection. This collection allows for Food Distribution Programs, such as the National School Lunch Program (NSLP), the Food Distribution Program on Indian Reservations (FDPIR), the Commodity Supplemental Food Program (CSFP), and The Emergency Food Assistance Program (TEFAP), to run effectively.

DATES: Written comments must be received on or before May 30, 2023.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comment.

• **Preferred Method:** Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the online instructions for submitting comments electronically.

• **Mail:** Send comments to Lisa Mays, Food and Nutrition Service, 1320 Braddock Place, 3rd Floor, Alexandria, Virginia 22314.

All responses to this notice will be summarized and included in the request

for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this information collection should be directed to Lisa Mays by phone at (703) 457-7762 or via email at lisa.mays@usda.gov.

SUPPLEMENTARY INFORMATION:

The information reported and the records kept for purposes of review under 7 CFR parts 240, 247, 250, 251, 253, and 254 are used by State and recipient agencies, Indian Tribal Organizations (ITOs), and FNS regional and national offices for the purpose of administering USDA Food Distribution Programs. The programs assist American farmers and people who are food insecure by purchasing commodities and delivering them to State agencies and ITOs that, in turn, distribute them to organizations for use in providing food assistance to those in need. The information collected allows State agencies and ITOs to administer programs that align with their local preferences and gives FNS National and Regional offices the ability to ensure programs are complying with program regulations and policies.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Supplementary Information

Title: Food Distribution Burden Table.

Form Numbers: FNS 7, 52, 53, 57, 152, 153, 155, 667, and SF-425.

OMB Number: 0584-0293.

Expiration Date: July 31, 2023.

Abstract: The Food Distribution Programs of the United States Department of Agriculture (USDA) assist American farmers and needy people by purchasing and delivering food to State agencies and ITOs that, in turn, distribute them to organizations that assist those in need. Effective administration of Food Distribution Programs is dependent on the collection

and submission of information from State and local agencies, ITOs, and private-for-profit companies to FNS. This information includes, for example, the number of households served in the programs; the quantities of foods ordered and where the food is to be delivered; verification of the receipt of a food order; and the amounts of USDA Foods in inventory. FNS employs this information collection activity to obtain the data necessary to make those calculations. This is a revision of the information collection under the burden number 0584-0293.

Regulations at 7 CFR 240 establish procedures for State distributing agencies which receive cash in lieu of USDA Foods, including the manner of disbursement and requirements for accountability for funds. Although the reporting burden for these forms is captured in a separate information activity collection (OMB #0584-0055), the recordkeeping burden of these collections is included in this revision and renewal.

Regulations at 7 CFR 247 provide instructions on the administration of the Commodity Supplemental Food Program (CSFP). Information collections in this section include applications to receive benefits, USDA Foods inventory management, use of administrative funding, and agreements between State agencies operating the program and FNS. These information collections ensure that the eligible individuals are able to access the program, that foods are distributed in a safe and effective manner, and that Federal funds are used appropriately.

Regulations at 7 CFR 250 govern the use of USDA Foods in child nutrition programs, household food distribution programs, disasters, and situations of distress. Information collection activities authorized by this section are necessary so that the Department can distribute USDA Foods as needed to State distributing agencies and, in turn, that State distributing agencies provide USDA Foods and associated funding to recipient agencies in accordance with Federal statutory and regulatory requirements.

Regulations at 7 CFR 251 establish requirements and procedures for administration of The Emergency Food Assistance Program (TEFAP). Information collections authorized by this section include agreements between State agencies and FNS, plans for statewide distribution of USDA Foods, State plan amendments to implement Farm to Food Bank project grants, and records of participation in the distribution of USDA Foods for home consumption. These information

collections provide FNS with an understanding of how USDA Foods are distributed through the program.

Regulations at 7 CFR 253 govern the Food Distribution Program on Indian Reservations (FDPIR). Information collections authorized by this section include plans of program operation, plans for monitoring and oversight of program operation by Tribal organizations, management of administrative funds, and reports of damaged or out of condition USDA Foods. These information collections allow FNS to understand how USDA Foods will be distributed by administering organizations, how Federal funds are used to support program operations, and ensure that USDA Foods are distributed in a safe and effective manner.

Regulations at 7 CFR part 254 establish requirements and procedures for the operation of FDPIR for households in Oklahoma. Information collections authorized by this section are identical to those of 7 CFR 253.

There are other forms which are used to report information that are associated with this collection that are approved under other FNS information collections or in other agency information collections. The burden associated with these forms is approved under these collections and is not included in the total burden for this collection. These forms include FNS-44 Report of Child and Adult Care Food Program, FNS-10 Report of School Operations, FNS-191 CSFP Racial/Ethnic Group Participation, FNS-292A Report of Commodity Distribution for Disaster Relief, and FNS-292B Disaster Supplemental Nutrition Assistance Program Benefit Issuance (OMB #0584-0594 Food Programs Reporting System (FPRS), expiration date 7/31/2023) and FNS-74 Federal-State Agreement (OMB #0584-0067 7 CFR part 235—State Administrative Expense (SAE) Funds, expiration date 1/31/2026). In addition to these Agency-developed forms, FNS also uses OMB Standard Forms SF-269 Financial Status Report (Long), SF-269A Financial Status Report (Short), SF-424 Application for Federal Assistance, and SF-1034 in the commodity programs.

Affected Public: Respondent groups include: (1) Individuals and households; (2) businesses or other for-profit entities; (3) not for-profit organizations; and (4) State, local, and tribal governments.

Estimated Number of Respondents: The total estimated number of respondents is 756,158. This includes 77,786 respondents from State, Local, and Tribal Governments, 6,886 from private for-profit business and

companies, 3,079 nonprofits, and 725,700 households and individuals.

Estimated Number of Responses per Respondent: The total estimated average number of responses is 5.35.

Estimated Time per Response: The average response time is 0.30 hours (18 minutes) per response.

Estimated Total Annual Burden on Respondents: 1,218,613.38. See table

below for estimated total annual burden for each type of respondent.

Affected public	Est. number of respondents	Number of responses per respondent	Total annual responses	Est. total hours per response	Est. total burden
Reporting					
State, Local, and Tribal Governments	26,175	8.89	232,806.24	0.25	59,317.75
Private for Profit	3,443	199.28	861,749.33	0.03	26,229.88
Private Not for Profit	840	3.86	3,240.00	0.19	614.50
Individual	725,700.00	1.97	1,428,200.00	0.25	361,650.00
Total Estimated Reporting Burden	756,158.00	3.34	2,525,995.57	0.18	447,812.13
Affected public	Est. number of recordkeepers	Number of responses per recordkeeper	Total annual responses	Est. total hours per response	Est. total burden
Recordkeeping					
State, Local, and Tribal Governments	51,611.00	9.14	471,720.46	0.08	35,467.24
Private for Profit	6,886	150.22	1,034,429.00	0.06	62,671.72
Private Not for Profit	3,079	4.15	12,782.00	52.63	672,662.29
Total Estimated Recordkeeping Burden	61,576.00	24.67	1,518,931.46	0.51	770,801.25
Total of Reporting and Recordkeeping					
Reporting	756,158.00	3.34	2,525,995.57	0.18	447,812.13
Recordkeeping	61,576.00	24.67	1,518,931.46	0.51	770,801.25
Total	756,158.00	5.35	4,044,927.03	0.30	1,218,613.38

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023-06607 Filed 3-29-23; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

The Emergency Food Assistance Program; Availability of Foods for Fiscal Year 2023

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the surplus and purchased foods that the Department expects to make available for donation to States for use in providing nutrition assistance to the needy under The Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 2023. The foods made available under this notice must, at the discretion of the State, be distributed to eligible recipient agencies (ERAs) for use in preparing meals and/or for distribution to households for home consumption.

FOR FURTHER INFORMATION CONTACT:

Ruth Decosse, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, Virginia 22314, ruth.decosse@usda.gov or telephone (617) 317-5136.

SUPPLEMENTARY INFORMATION:

In accordance with the provisions set forth in the Emergency Food Assistance Act of 1983 (EFAA), 7 U.S.C. 7501, *et seq.*, and the Food and Nutrition Act of 2008, 7 U.S.C. 2036, the Department makes foods available to States for use in providing nutrition assistance to those in need through TEFAP. In accordance with section 214 of the EFAA, 7 U.S.C. 7515, funding for TEFAP foods is allocated among States according to a formula that accounts for poverty and unemployment levels within each State. Section 214(a)(1) of the Act requires that 60 percent of each State's allocation be based on the number of people with incomes below the poverty level within the State; and section 214(a)(2) requires that the remaining 40 percent be equal to the percentage of the nation's unemployed persons within the State. State officials are responsible for establishing the network through which the foods will be used by ERAs in

providing nutrition assistance to those in need and for allocating foods among those ERAs. States have full discretion in determining the amount of foods that will be made available to ERAs for use in preparing meals and/or for distribution to households for home consumption.

Surplus Foods

Surplus foods donated for distribution under TEFAP are Commodity Credit Corporation (CCC) foods purchased under the authority of section 416 of the Agricultural Act of 1949, 7 U.S.C. 1431 (section 416) and foods purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, 7 U.S.C. 612c (section 32). The types of foods typically purchased under section 416 include dairy, grains, oils, and peanut products. The types of foods purchased under section 32 include meat, poultry, fish, vegetables, dry beans, juices, and fruits.

Approximately \$233.1 million in surplus foods acquired in FY 2022 are being delivered to States in FY 2023. Surplus foods currently scheduled for delivery include almonds, beans, bison, cherries, chicken, dates, fish, grapes, shrimp, peaches, pistachios, nectarines, raisins, sweet potatoes, and walnuts.

Other surplus foods may be made available to TEFAP throughout the year. The Department would like to point out that food acquisitions are based on changing agricultural market conditions; therefore, the availability of foods is subject to change.

Purchased Foods

In accordance with section 27 of the Food and Nutrition Act of 2008, 7 U.S.C. 2036, the Secretary is directed to purchase an estimated \$445.5 million worth of foods in FY 2023 for distribution through TEFAP. In addition, States will receive up to \$943 million in supplemental foods and operational expenses provided under the statutory authority of the Commodity Credit Corporation. These foods are made available to States in addition to those surplus foods which otherwise might be provided to States for distribution under TEFAP.

For FY 2023, the Department anticipates purchasing the foods listed in the following table for distribution through TEFAP. The amounts of each item purchased will depend on the prices the Department must pay, as well as the quantity of each item requested by the States. Changes in agricultural market conditions may result in the availability of additional types of foods or the non-availability of one or more foods listed in the table.

FY 2023 USDA FOODS AVAILABLE LIST FOR THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP)

FRUITS:

Apples, Braeburn, Fresh
Apples, Empire, Fresh
Apples, Fuji, Fresh
Apples, Gala, Fresh
Apples, Granny Smith, Fresh
Apples, Red Delicious, Fresh
Apples, Fresh
Apple Juice, 100%, Unsweetened
Apple Slices, Unsweetened, Frozen (IQF)
Applesauce, Unsweetened, Canned (K)
Applesauce, Unsweetened, Cups, Shelf-Stable
Apricots, Halves, Extra Light Syrup, Canned
Blueberries, Highbush, Frozen
Cherry Apple Juice, 100%, Unsweetened
Cranberry Apple Juice, 100%, Unsweetened
Cranberries, Dried, Individual Portion
Grape Juice, Concord, 100%, Unsweetened
Grapefruit Juice, 100%, Unsweetened
Fruit and Nut Mix, Dried
Mixed Fruit, Extra Light Syrup, Canned
Oranges, Fresh
Orange Juice, 100%, Unsweetened
Peaches, Freestone, Slices, Frozen
Peaches, Sliced, Extra Light Syrup, Canned

FY 2023 USDA FOODS AVAILABLE LIST FOR THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP)— Continued

Pears, Bartlett, Fresh
Pears, Bosc, Fresh
Pears, D'Anjou, Fresh
Pears, Fresh
Pears, Extra Light Syrup, Canned (K)
Plums, Pitted, Dried
Raisins, Unsweetened, Individual Portion
Raisins, Unsweetened

DAIRY:

Cheese, American, Reduced Fat, Loaves, Refrigerated
Cheese, Cheddar, Yellow, Shredded, Refrigerated
Milk, 1%, Shelf-Stable UHT
Milk, 1%, Individual Portion, Shelf-Stable UHT
Milk 1% Fresh
Milk, Skim, Fresh

VEGETABLES:

Beans, Green, Low-sodium, Canned (K)
Beans, Green, No Salt Added, Frozen
Carrots, Diced, No Salt Added, Frozen
Carrots, Sliced, Low-sodium, Canned
Corn, Whole Kernel, No Salt Added, Canned (K)
Corn, Cream Style, Low sodium, Canned
Mixed Vegetables, 7-Way Blend, Low-sodium, Canned
Corn, Whole Kernel, No Salt Added, Frozen
Mixed Produce Box, Fresh
Peas, Green, Low-sodium, Canned
Peas, Green, No Salt Added, Frozen
Potatoes, Dehydrated Flakes
Potatoes, Round, Fresh
Potatoes, Russet, Fresh
Potatoes, Sliced, Low-sodium, Canned
Pumpkin, No Salt Added, Canned
Spaghetti Sauce, Low-sodium, Canned
Spinach, Low-sodium, Canned
Sweet Potatoes, Fresh
Tomato Juice, 100%, Low-sodium
Tomato Sauce, Low-sodium, Canned
Tomato Sauce, Low-sodium, Canned (K) (H)
Tomato Soup, Condensed, Low-sodium, Canned
Tomatoes, Diced, No Salt Added, Canned
Vegetable Soup, Condensed, Low-Sodium, Canned

LEGUMES:

Beans, Black, Low-sodium, Canned
Beans, Black-eyed Pea, Low-sodium, Canned
Beans, Black-eyed Pea, Dry
Beans, Garbanzo, Canned (K)
Beans, Great Northern, Dry
Beans, Kidney, Light Red, Low-sodium, Canned
Beans, Kidney, Light Red, Dry
Beans, Lima, Baby, Dry
Beans, Pinto, Low-sodium, Canned
Beans, Pinto, Dry
Beans, Refried, Low-sodium, Canned
Beans, Vegetarian, Low-sodium, Canned
Lentils, Dry
Peas, Green Split, Dry

PROTEIN FOODS:

Alaska Pollock Fish, Whole Grain Breaded Sticks, Frozen
Alaska Pollock Fish, Fillets, Frozen

FY 2023 USDA FOODS AVAILABLE LIST FOR THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP)— Continued

Beef, Canned/Pouch
Beef, Fine Ground, 85% Lean/15% Fat, Frozen
Beef, Fine Ground, 85% Lean/15% Fat, Frozen, LFTB
OPT, Frozen
Beef Stew, Canned/Pouch
Catfish, Fillets, Frozen
Chicken, Canned
Chicken, Pouch
Chicken, Split Breast, Frozen
Chicken, Whole, Frozen
Eggs, Fresh
Egg Mix, Dried
Peanut Butter, Smooth
Peanut Butter, Smooth (K)
Peanut Butter, Smooth, Individual Portion
Peanuts, Roasted, Unsalted
Pork, Canned/Pouch
Pork, Ham, Frozen
Pork, Chops, Boneless, Frozen
Salmon, Pink, Canned
Salmon, Pink, Canned (K)

GRAINS:

Bakery Mix, Lowfat
Cereal, Wheat Farina, Enriched
Crackers, Unsalted
Flour, All Purpose, Enriched, Bleached
Flour, White Whole Wheat (WG)
Grits, Corn, White
Grits, Corn, Yellow
Oats, Rolled, Quick Cooking (WG)
Pasta, Egg Noodles
Pasta, Macaroni, Enriched
Pasta, Macaroni, (WG)
Pasta, Macaroni and Cheese
Pasta, Rotini, (WG)
Pasta, Spaghetti, Enriched
Pasta, Spaghetti, (WG)
Rice, Brown, Long-Grain, Parboiled (WG)
Rice, Medium Grain
Rice, Long Grain
Tortillas, Whole Grain, Frozen (WG)

OILS:

Oil, Vegetable

OTHER:

Soup, Cream of Chicken, Condensed, Reduced Sodium
Soup, Cream of Mushroom, Condensed, Reduced Sodium

KEY:

H—Halal Certification Required.
K—Kosher Certification Required.
IQF—Individually Quick Frozen.
UHT—Ultra-High Temperature Pasteurization.
LFTB OTP—Lean Finely Textured Beef Optional.
WG—Whole Grain.

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2023-06615 Filed 3-29-23; 8:45 am]

BILLING CODE 3410-30-P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the New York Advisory Committee; Correction**

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice; revision to a sentence in the **SUPPLEMENTARY INFORMATION**.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** on Wednesday, March 23, 2023, concerning a meeting of the New York Advisory Committee. The following sentence in the **SUPPLEMENTARY INFORMATION** section, “Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and meeting ID number,” should be replaced with “Live transcription will be available for the duration of the meeting. To request additional accommodations, please email svillaneuva@usccr.gov at least 10 business days prior to the meeting.”

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, 312–353–8311, mtrachtenberg@usccr.gov.

Correction: In the **Federal Register** on Wednesday, March 23, 2023, in FR Document Number 2023–05931, on page 17518, the second column, please replace the sentence in the **SUPPLEMENTARY INFORMATION** section, “Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and meeting ID number,” with the following, “Live transcription will be available for the duration of the meeting. To request additional accommodations, please email svillaneuva@usccr.gov at least 10 business days prior to the meeting.”

Dated: March 25, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–06570 Filed 3–29–23; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the New York Advisory Committee; Correction**

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice; revision to a sentence in the **SUPPLEMENTARY INFORMATION**.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal**

Register on Wednesday, March 23, 2023, concerning a meeting of the New York Advisory Committee. The following sentence in the **SUPPLEMENTARY INFORMATION** section, “Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and meeting ID number,” should be replaced with “Live transcription will be available for the duration of the meeting. To request additional accommodations, please email svillaneuva@usccr.gov at least 10 business days prior to the meeting.”

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, 312–353–8311, mtrachtenberg@usccr.gov.

Correction: In the **Federal Register** on Wednesday, March 23, 2023, in FR Document Number 2023–05930, on page 17519, the second column, please replace the sentence in the **SUPPLEMENTARY INFORMATION** section, “Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and meeting ID number,” with the following, “Live transcription will be available for the duration of the meeting. To request additional accommodations, please email svillaneuva@usccr.gov at least 10 business days prior to the meeting.”

Dated: March 25, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–06569 Filed 3–29–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE**Bureau of Industry and Security**

In the Matter of: Jose Luis Alonso, 3433 Nottingham Drive, Brownsville, TX 78526 and 2719 Gibraltar Street, Brownsville, TX 78520; Order Denying Export Privileges

On January 13, 2022, in the U.S. District Court for the Southern District of Texas, Jose Luis Alonso (“Alonso”) was convicted of violating 18 U.S.C. 554(a). Specifically, Alonso was convicted of attempted smuggling from the United States to Mexico one (1) AM 15 pistol, one (1) .22 caliber rifle, and one (1) 12 gauge shotgun. As a result of his conviction, the Court sentenced Alonso to 24 months of confinement, three years of supervised release, and a \$100 assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (“ECRA”),¹ the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (“BIS”) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Alonso’s conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (“EAR” or the “Regulations”), BIS provided notice and opportunity for Alonso to make a written submission to BIS. 15 CFR 766.25.² BIS has not received a written submission from Alonso.

Based upon my review of the record and consultations with BIS’s Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Alonso’s export privileges under the Regulations for a period of seven years from the date of Alonso’s conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Alonso had an interest at the time of his conviction.³

Accordingly, it is hereby *ordered*:

First, from the date of this Order until January 13, 2029, Jose Luis Alonso, with last known addresses of 3433 Nottingham Drive, Brownsville, TX 78526, and 2719 Gibraltar Street, Brownsville, TX 78520, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (“the Denied Person”), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

¹ ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

² The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2022).

³ The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Alonso by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or

business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Alonso may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Alonso and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until January 13, 2029.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023-06635 Filed 3-29-23; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Ye Sang “Ivy” Wang, 972 Red Granite Road, Chula Vista, CA 91913

On December 21, 2021, in the U.S. District Court for the Southern District of California, Ye Sang “Ivy” Wang (“Wang”) was convicted of violating 18 U.S.C. 371. Specifically, Wang was convicted of conspiring to willfully export from the United States to China, controlled military equipment and supplies for profit, without the required licenses. As a result of her conviction, the Court sentenced Wang to 30 months of confinement, three years of supervised release, \$100 special assessment, and a \$20,000 criminal fine. Pursuant to Section 1760(e) of the Export Control Reform Act (“ECRA”),¹ the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (“BIS”) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Wang’s conviction for violating 18 U.S.C. 371. As provided in Section 766.25 of the Export Administration Regulations

(“EAR” or the “Regulations”), BIS provided notice and opportunity for Wang to make a written submission to BIS. 15 CFR 766.25.² BIS has received and considered a written submission from Wang.

Based upon my review of the record, including Wang’s submission, and consultations with BIS’s Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Wang’s export privileges under the Regulations for a period of 10 years from the date of Wang’s conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Wang had an interest at the time of her conviction.³

Accordingly, it is hereby *ordered*:

First, from the date of this Order until December 21, 2031, Ye Sang “Ivy” Wang, with a last known address of 972 Red Granite Road, Chula Vista, CA 91913, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (“the Denied Person”), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

² The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

³ The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

¹ ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Wang by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Wang may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Wang and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until December 21, 2031.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023-06631 Filed 3-29-23; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

**In the Matter of: Mario Ramirez-Rios,
3724 Magali Circle, Brownsville, Texas
78521**

Order Denying Export Privileges

On October 23, 2020, in the U.S. District Court for the Southern District of Texas, Mario Ramirez-Rios (“Ramirez-Rios”) was convicted of violating 18 U.S.C. 554(a). Specifically, Ramirez-Rios was convicted of attempted smuggling from the United States to Mexico: 3,280 rounds of 7.62 x 39mm ammunition and 200 rounds of 9mm ammunition, items designated as defense articles on the United States Munitions List without the required license or written approval. As a result of his conviction, the Court sentenced Ramirez-Rios to 46 months of confinement with credit for time served and a \$100 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (“ECRA”),¹ the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (“BIS”) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Ramirez-Rios’s conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (“EAR” or the “Regulations”), BIS provided notice and opportunity for Ramirez-Rios to make a written submission to BIS. 15 CFR 766.25.² BIS has not received a written submission from Ramirez-Rios.

Based upon my review of the record and consultations with BIS’s Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Ramirez-Rios’s export privileges under the Regulations for a period of 10 years from the date of Ramirez-Rios’s conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which

¹ ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

² The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2022).

Ramirez-Rios had an interest at the time of his conviction.³

Accordingly, it is hereby *ordered*:

First, from the date of this Order until October 23, 2030, Mario Ramirez-Rios, with a last known address of 3724 Magali Circle, Brownsville, Texas 78521, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (“the Denied Person”), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the

³ The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Ramirez-Rios by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Ramirez-Rios may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Ramirez-Rios and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until October 23, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023-06634 Filed 3-29-23; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: Transportation and Logistics Trade Mission to Saudi

Arabia, December 2–5, 2023. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: <https://www.trade.gov/trade-missions>. For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<https://www.trade.gov/trade-missions-schedule>) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Odum, Events Management Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482-6397 or email Jeffrey.Odum@trade.gov.

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department of Commerce may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in

the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content.

A trade association/organization applicant must certify to the above for every company it seeks to represent on the mission. In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

Balance of company size and location may also be considered during the review process. Referrals from a political party or partisan political group or any information, including on the application, containing references to

political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions. Companies will be selected on a rolling basis, with priority given to those that apply and pay earlier.

Trade Mission Participation Fees

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any

representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html>. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies as a “small business” under the Small Business Administration’s (SBA) size standards (<https://www.sba.gov/document/support-table-size-standards>), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (<https://www.sba.gov/size-standards>) can help you determine the qualifications that apply to your company.

Important Note About the Covid-19 Pandemic

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees, accordingly, prepare an agenda for virtual activities, and notify the previously selected applicants with the option to opt-in to the new virtual program.

Mission List: (additional information about trade missions can be found at <https://www.trade.gov/trade-missions>).

Transportation and Logistics Trade Mission to Saudi Arabia, December 2–5, 2023

Summary

The United States Department of Commerce, International Trade Administration (ITA), is organizing a Transportation and Logistics Trade Mission to Saudi Arabia, December 2–5, 2023. The purpose of the mission is to introduce U.S. companies to smart-mobility opportunities within the transportation and logistics ecosystems in Saudi Arabia and to help them find business partners in the region. The mission will target approximately 15 U.S. companies or trade associations (minimum 10) that provide products and services related to a broad range of best prospect transportation and logistics subsectors in Saudi Arabia, namely companies involved in the development of freight, rail, smart ports, digitalization in supply chain and intermobility transport infrastructure technology in these markets.

Recruitment and consideration will be extended to all export-ready companies that meet the established criteria for participation in the mission.

The mission will begin in Riyadh, Saudi Arabia where delegates will participate in pre-arranged business-to-business (B2B) meetings and business-to-government (B2G) meetings with relevant transport-related ministries in Saudi Arabia, as well as attend a networking reception. Following these meetings, the delegates will travel to Jeddah, Saudi Arabia for activities focused on supply chain management and logistics, including site visits, business to business meetings and a networking reception.

Proposed Timetable

* *Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Saturday	December 2, 2023	Delegates arrive in Riyadh.
Sunday	December 3, 2023	Riyadh B2B and B2G meetings and networking reception.
Monday	December 4, 2023	Riyadh B2B appointments; travel to Jeddah, Jeddah networking reception.
Tuesday	December 5, 2023	Jeddah B2B appointments; trade mission concludes.

Participation Requirements

All parties interested in participating in the Transportation and Logistics Trade Mission to Saudi Arabia must complete and submit an application package for consideration by the Department of Commerce. All

applicants will be evaluated on their ability to meet certain conditions and satisfy the selection criteria as outlined below. A minimum of ten and approximately of fifteen firms and/or trade associations will be selected to

participate in the mission from the applicant pool.

Fees and Expenses

After a firm or trade association has been selected to participate on the mission, a payment to the Department of

Commerce in the form of a participation fee is required. The participation fee for the Transportation and Logistics Trade Mission to Saudi Arabia will be \$2,600 for small or medium-sized enterprises (SME) and \$3,500 for large firms or trade associations.¹ The fee for each additional firm representative (large firm or SME/trade organization) is \$1,000 for both stops. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms. If an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

Trade mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at <https://travel.state.gov/content/passports/en/alertswarnings.html>. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

¹ For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies under the Small Business Administration's (SBA) size standards (<https://www.sba.gov/document/support-table-size-standards>), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (<https://www.sba.gov/size-standards/>) can help you determine the qualifications that apply to your company.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Department of Commerce trade mission calendar (<https://www.trade.gov/trade-missions-schedule>) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will conclude on August 30, 2023. The Department of Commerce will review applications on a rolling basis and inform applicants of selection decisions on a comparative basis. Applications received after August 30, 2023, will be considered only if space and scheduling constraints permit.

Contacts

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Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2023-06616 Filed 3-29-23; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Applications for Inclusion on the Lists of Arbitrators Under the Data Privacy Framework Program

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 30, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Leo Kim, ITA Paperwork Clearance Officer, International Trade Administration, Department of Commerce, Room 23016RA, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at PRAComment@doc.gov). Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to David Ritchie, Senior Policy Advisor, International Trade Administration, Department of Commerce via email at dpf.program@trade.gov, or by telephone at 202-482-1512.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States, the European Union (EU), the United Kingdom (UK), and Switzerland share a commitment to enhancing privacy protection, the rule of law, and a recognition of the importance of transatlantic data flows to our respective citizens, economies, and societies, but take different approaches to doing so. Given those differences, the Department of Commerce (DOC)

developed the EU-U.S. Data Privacy Framework (EU-U.S. DPF), the UK Extension to the EU-U.S. Data Privacy Framework (UK Extension to the EU-U.S. DPF), and the Swiss-U.S. Data Privacy Framework (Swiss-U.S. DPF) in consultation with the European Commission, the UK Government, the Swiss Federal Administration, industry, and other stakeholders. These arrangements were respectively developed to provide U.S. organizations reliable mechanisms for personal data transfers to the United States from the European Union, the United Kingdom, and Switzerland while ensuring data protection that is consistent with EU, UK, and Swiss law.

The DOC is issuing the EU-U.S. DPF Principles and the Swiss-U.S. DPF Principles, including the respective sets of Supplemental Principles (collectively the Principles) and Annex I of the Principles, as well as the UK Extension to the EU-U.S. DPF under its statutory authority to foster, promote, and develop international commerce (15 U.S.C. 1512). The International Trade Administration (ITA) will administer and supervise the Data Privacy Framework program, including maintaining and making publicly available the Data Privacy Framework List, an authoritative list of U.S. organizations that have self-certified to the DOC and declared their commitment to adhere to the Principles pursuant to the EU-U.S. DPF and, as applicable, the UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF. While the decision by an organization to self-certify its compliance pursuant to the EU-U.S. DPF and, as applicable the UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF and by extension participate in the Data Privacy Framework program is voluntary; effective compliance is compulsory: organizations that self-certify to the DOC and publicly declare their commitment to adhere to the Principles must comply fully with the Principles. Such commitments to comply with the Principles are legally enforceable under U.S. law. On the basis of the Principles, Executive Order 14086, 28 CFR part 201, and accompanying letters and materials, including ITA's commitments regarding the administration and supervision of the Data Privacy Framework program, it is the DOC's expectation that the European Commission, the UK Government, and the Swiss Federal Administration will respectively recognize the adequacy of the protection provided by the EU-U.S. DPF, the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. DPF thereby

enabling personal data transfers from each respective jurisdiction to U.S. organizations participating in the relevant part of the Data Privacy Framework program. The EU-U.S. DPF, the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. DPF will not enter into effect until they have respectively received such recognition (*i.e.*, until such formal recognition enters into effect).

As respectively described in Annex I of the EU-U.S. DPF Principles, the UK Extension to the EU-U.S. DPF, and Annex I of the Swiss-U.S. DPF Principles the DOC commits separately with the European Commission, the UK Government, and the Swiss Federal Administration to implement an arbitration mechanism to provide EU, UK, and Swiss individuals with the ability under certain circumstances to invoke binding arbitration to determine, for residual claims, whether an organization has violated its obligations under the Principles as to those individuals. Organizations that self-certify their compliance pursuant to the EU-U.S. DPF, including those that also elect to participate in the UK Extension to the EU-U.S. DPF are obligated to arbitrate claims and follow the terms as set forth in Annex I of the EU-U.S. DPF Principles, provided that an EU or UK (as applicable) individual has invoked binding arbitration by delivering notice to the organization at issue and following the procedures and subject to the conditions set forth in Annex I of the EU-U.S. DPF Principles. Organizations that self-certify their compliance pursuant to the Swiss-U.S. DPF are obligated to arbitrate claims and follow the terms as set forth in Annex I of the Swiss-U.S. DPF Principles, provided that a Swiss individual has invoked binding arbitration by delivering notice to the organization at issue and following the procedures and subject to the conditions set forth in Annex I of the Swiss-U.S. DPF Principles. An individual's decision to invoke this binding arbitration option is entirely voluntary. Arbitral decisions will be binding on all parties to the arbitration. Under this binding arbitration option, a panel (consisting of one or three arbitrators, as agreed by the parties) has the authority to impose individual-specific, non-monetary equitable relief (such as access, correction, deletion, or return of the individual's data in question) necessary to remedy the violation of the Principles only with respect to the individual. No damages, costs, fees, or other remedies are available. The parties will select the

arbitrators from the list(s) of arbitrators described below.

Pursuant to the EU-U.S. DPF and the UK Extension to the EU-U.S. DPF, the DOC and the European Commission will develop and seek to maintain a list of at least 10 arbitrators. The parties, including the EU or UK individual who has invoked binding arbitration, will select arbitrators for the arbitration panel from that list of arbitrators developed under the EU-U.S. DPF (EU-U.S. DPF List of Arbitrators). To be eligible for inclusion on the EU-U.S. DPF List of Arbitrators, applicants must be admitted to practice law in the United States and be experts in U.S. privacy law, with expertise in EU data protection law; and shall not be subject to any instructions from, or be affiliated with, either party, or any participating organization, or the United States, European Union, or any EU Member State or any other governmental authority, public authority, or enforcement authority. Arbitrators will remain on the EU-U.S. DPF List of Arbitrators for a period of 3 years, absent exceptional circumstances or removal for cause, renewable by the DOC, with prior notification to the European Commission for additional 3-year terms.

Pursuant to the Swiss-U.S. DPF the DOC and the Swiss Federal Administration will develop and seek to maintain a list of up to five arbitrators to supplement the list of arbitrators developed under the EU-U.S. DPF. The parties, including the Swiss individual who has invoked binding arbitration, will select arbitrators for the arbitration panel from the list of arbitrators developed under the EU-U.S. DPF, as supplemented by the list of arbitrators developed under the Swiss-U.S. DPF (Swiss-U.S. DPF Supplemental List of Arbitrators). To be eligible for inclusion on the Swiss-U.S. DPF Supplemental List of Arbitrators, applicants must be admitted to practice law in the United States and be experts in U.S. privacy law, with expertise in European or Swiss data protection law; and shall not be subject to any instructions from, or be affiliated with, either party, or any participating organization, or the United States, Switzerland, European Union, or any EU Member State or any other governmental authority, public authority, or enforcement authority. Arbitrators will remain on the Swiss-U.S. DPF Supplemental List of Arbitrators for a period of 3 years, absent exceptional circumstances or removal for cause, renewable by the DOC, with prior notification to the Swiss Federal Administration for additional 3-year terms.

To be considered for inclusion on the EU-U.S. DPF List of Arbitrators or the Swiss-U.S. DPF Supplemental List of Arbitrators, eligible individuals will be respectively evaluated by the DOC and the European Commission and the DOC and the Swiss Federal Administration on the basis of independence, integrity, and expertise:

Independence:

—Freedom from bias and prejudice.

Integrity:

—Held in the highest regard by peers for integrity, fairness, and good judgment.

—Demonstrates high ethical standards and commitment necessary to be an arbitrator.

Expertise:

—Required expertise:

—Admission to practice law in the United States.

—Level of demonstrated expertise in U.S. privacy law and EU and/or Swiss data protection law (as applicable).

—Other expertise that may be considered includes any of the following:

—Relevant educational degrees and professional licenses.

—Relevant professional or academic experience or legal practice.

—Relevant training or experience in arbitration or other forms of dispute resolution.

The DOC has agreed with the European Commission to the adoption of arbitration rules that govern arbitration proceedings and a code of conduct for arbitrators under the EU-U.S. DPF (and similarly agreed with the UK Government as relates to arbitration proceedings under the UK Extension to the EU-U.S. DPF), and the Swiss Federal Administration to the adoption of arbitration rules that govern arbitration proceedings and a code of conduct for arbitrators under the Swiss-U.S. DPF. In the event that the rules governing the proceedings and/or the code of conduct for arbitrators need to be changed, the DOC and the European Commission and the Swiss Federal Administration will agree to amend those rules or adopt a different set of existing, well-established U.S. arbitral procedures, and/or amend the code of conduct for arbitrators (as applicable).

The DOC has selected the International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association (AAA) (collectively ICDR-AAA) to administer arbitrations pursuant to and manage the arbitral fund identified in Annex I of the EU-U.S. DPF Principles, including as relates to the UK Extension to the EU-U.S. DPF,

and Annex I of the Swiss-U.S. DPF Principles. Among other things, the ICDR-AAA facilitates arbitrator fee arrangements, including the collection and timely payment of arbitrator fees and other expenses. On September 15, 2017, the DOC and the European Commission agreed to the adoption of a set of arbitration rules to govern binding arbitration proceedings described in Annex I of the EU-U.S. Privacy Shield Framework Principles, as well as a code of conduct for arbitrators that is consistent with generally accepted ethical standards for commercial arbitrators and Annex I of the Principles. On March 29, 2018, the DOC and the Swiss Federal Administration agreed to the adoption of a set of arbitration rules to govern binding arbitration proceedings described in Annex I of the Swiss-U.S. Privacy Shield Framework Principles, as well as a code of conduct for arbitrators that is consistent with generally accepted ethical standards for commercial arbitrators and Annex I of the Principles. The DOC has respectively agreed with the European Commission (and the UK Government, as appropriate, with regard to the UK Extension to the EU-U.S. DPF) and the Swiss Federal Administration to adapt those sets of arbitration rules and codes of conduct to reflect the updates under the EU-U.S. DPF (including as applicable to the UK Extension to the EU-U.S. DPF) and the Swiss-U.S. DPF, and the DOC will work with the ICDR-AAA to make those updates.

Applications:

Applications must be typewritten, electronically submitted, and headed “Application for Inclusion on the EU-U.S. DPF List of Arbitrators” or “Application for Inclusion on the Swiss-U.S. DPF Supplemental List of Arbitrators” (as applicable).

Applications must include the following information, and each section of the application should be labeled and numbered as indicated below:

—Applicant’s name.

—Applicant’s mailing address, telephone number, and email address.

1. Independence

—Description of the applicant’s affiliations with any organization that has self-certified under the EU-U.S. DPF or the Swiss-U.S. DPF, or the United States, European Union, any EU Member State, Switzerland, or any other governmental authority, public authority, or enforcement authority.

2. Integrity

—The respective names, job titles (as applicable), mailing addresses, telephone numbers, and email

addresses of three individuals willing to provide information concerning the applicant’s qualifications for service, including the applicant’s character, reputation, reliability, and judgment.

—Description of the applicant’s willingness and ability to make time commitments necessary to be an arbitrator.

3. Expertise

—Demonstration of admittance to practice law in the United States.

—Relevant academic degrees and professional training and licensing.

—Current employment, including job title and description of responsibility, as well as name and mailing address of employer, and name, job title, telephone number, and email address of supervisor or other reference.

—Employment history, including the dates and mailing addresses of each prior position and a summary of responsibilities.

—Description of expertise in U.S. privacy law and EU and/or Swiss data protection law (as applicable), and, as appropriate, any other European data protection law.

—Description of training or experience in arbitration or other forms of dispute resolution, if applicable.

—A list of publications, testimony, and speeches, if any, concerning U.S. privacy law and EU and/or Swiss data protection law (as applicable).

II. Method of Collection

Individuals interested in being considered for inclusion on the EU-U.S. DPF List of Arbitrators or the Swiss-U.S. DPF Supplemental List of Arbitrators would submit their applications to the DOC online via email at dpf.program@trade.gov.

The DOC previously requested and obtained approval of analogous information collections that have allowed the DOC, as represented by ITA, to collect information from applicants for inclusion on the EU-U.S. Privacy Shield List of Arbitrators (OMB Control No. 0625–0277) and from applicants for inclusion on the Swiss-U.S. Privacy Shield List of Arbitrators (OMB Control No. 0625–0278). Pursuant to the EU-U.S. DPF, the EU-U.S. Privacy Shield Framework Principles will be amended as the “EU-U.S. Data Privacy Framework Principles”; and pursuant to the Swiss-U.S. DPF, the Swiss-U.S. Privacy Shield Framework Principles will be amended as the “Swiss-U.S. Data Privacy Framework Principles”. Organizations that self-certified their commitment to comply with the EU-U.S. Privacy Shield Framework Principles and/or the Swiss-U.S. Privacy Shield Framework Principles that wish

to enjoy the benefits of participating in the EU-U.S. DPF and/or the Swiss-U.S. DPF (as applicable) must comply with the amended Principles once those amendments have entered into effect. More information on the binding arbitration option under the Data Privacy Framework program will be made available on the DOC's Data Privacy Framework program website (<https://www.dataprivacyframework.gov/>) once that is launched; however, such information will also be made available, as appropriate, on the DOC's Privacy Shield program website (<https://www.privacyshield.gov/welcome>).

III. Data

OMB Control Number: New collection. Not yet assigned.

Form Number(s): None.

Type of Review: Regular submission, new information collection.

Affected Public: Private individuals.

Estimated Number of Respondents: 36.

Estimated Time per Response: 240 minutes.

Estimated Total Annual Burden Hours: 144.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: The DOC's statutory authority to foster, promote, and develop the foreign and domestic commerce of the United States (15 U.S.C. 1512).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that

your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023-06647 Filed 3-29-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-057]

Certain Tool Chests and Cabinets From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

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

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain tool chests and cabinets (tool chests and cabinets) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the "Final Results of Sunset Review" section of this notice.

DATES: Applicable March 30, 2023.

FOR FURTHER INFORMATION CONTACT: Claudia Cott, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4270.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 2018, Commerce published in the *Federal Register* the CVD order on tool chests from China.¹ On December 1, 2022, Commerce published in the *Federal Register* the *Initiation Notice* of the first five-year sunset review of the *Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² In accordance with 19 CFR 351.218(d)(1)(i) and (ii),

¹ See *Certain Tool Chests and Cabinets from the People's Republic of China: Countervailing Duty Order*, 83 FR 3299 (January 24, 2018) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 87 FR 73757 (December 1, 2022) (*Initiation Notice*).

Commerce received a timely notice of intent to participate in this sunset review from Stanley Black & Decker (the domestic interested party) within 15 days after the date of publication of the *Initiation Notice*.³ The domestic interested party claimed interested party status under section 771(9)(C) of the Act as a producer of a domestic like product in the United States.⁴

Commerce received a timely and adequate substantive response to the *Initiation Notice* from the domestic interested party within the 30-day period specified in 19 CFR 351.218(d)(3)(i).⁵ Commerce received no substantive responses from any other interested parties, including the Government of China, nor was a hearing requested. On January 25, 2023, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from other interested parties.⁶ As a result, in accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited, *i.e.*, 120-day, sunset review of the *Order*.

Scope of the Order

The scope of the *Order* covers certain metal tool chests and tool cabinets, with drawers, from China. The scope covers all metal tool chests and cabinets, including top chests, intermediate chests, tool cabinets and side cabinets, storage units, mobile work benches, and work stations and that have the following physical characteristics:

(1) a body made of carbon, alloy, or stainless steel and/or other metals;

(2) two or more drawers for storage in each individual unit;

(3) a width (side to side) exceeding 15 inches for side cabinets and exceeding 21 inches for all other individual units but not exceeding 60 inches;

(4) a body depth (front to back) exceeding 10 inches but not exceeding 24 inches; and

(5) prepackaged for retail sale.

³ See Domestic Interested Party's Letter, "Five Year ("Sunset") Review of the Countervailing Duty Order on Tool Chests and Cabinets from China—Domestic Interested Party's Notice of Intent to Participate," dated December 15, 2022. The petitioner in the underlying investigation, Waterloo Industries Inc. (Waterloo), was acquired by Stanley Black & Decker Corporation on July 28, 2017, and now operates under the Stanley Black & Decker name.

⁴ *Id.*

⁵ See Domestic Interested Party's Letter, "Five Year ("Sunset") Review of the Countervailing Duty Order on Tool Chests and Cabinets from China—Domestic Interested Party's Substantive Response," dated January 3, 2023 (Substantive Response).

⁶ See Commerce's Letter, "Sunset Reviews Initiated December 1, 2022," dated January 25, 2023.

For purposes of this scope, the width parameter applies to each individual unit, *i.e.*, each individual top chest, intermediate top chest, tool cabinet, side cabinet, storage unit, mobile work bench, and work station. Merchandise subject to the *Order* is classified under HTSUS categories 9403.20.0021, 9403.20.0026, 9403.20.0030, 9403.20.0080, 9403.20.0090, and 7326.90.8688, but may also be classified under HTSUS category 7326.90.3500. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the *Order* is dispositive. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.⁷

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included as Appendix I 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>.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed in Appendix II to this notice.

Administrative Protective Order

This notice serves as the only 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). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing the final results and notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: March 24, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 2. Net Countervailable Subsidy Likely to Prevail
 3. Nature of the Subsidy
- VII. Final Results of Sunset Review
- VIII. Recommendation

Appendix II

Exporter/producer	Subsidy rate (percent <i>ad valorem</i>)
Jiangsu Tongrun Equipment Technology Co., Ltd ⁸	15.52
Zhongshan Geelong Manufacturing Co., Ltd	14.46
Allround Hardware Co., Ltd	96.15
Beijing Kang Jie Kong International Cargo Agent Co., Ltd	96.15
Changshu Zhongcheng Tool Box Co., Ltd	14.82
Changzhou City Hongfei Metalwork Corporation	96.15
Changzhou Machan Steel Furniture Co., Ltd	14.82
China National Electronics Import and Export Ningbo Co	96.15
Foshan Lishida Metal Products Co., Ltd	96.15
Gem-Year Industrial Co., Ltd	96.15
Guangdong Hisense Home Appliances Co., Ltd	14.82
Guerjie Enterprise Co., Ltd	96.15
Haiyan Dingfeng Fasteners Ltd	96.15
Hangzhou Xiaoshan Import and Export Trading Co., Ltd	96.15
Hyxion Metal Industry	14.82
Jiaxing Pinyou Import & Export Co., Ltd	96.15
Jin Rong Hua Le Metal Manufactures Co., Ltd	14.82
Jinhua JG Tools Manufacturing Co	14.82
Jinhua Yahu Tools Co., Ltd	14.82
Keesung Manufacturing Co., Ltd	14.82
Kingstar Tools Co., Ltd	96.15
Liyang Flying Industry Co., Ltd	96.15
Meridian International Co., Ltd	14.82
Ningbo Better Design Industry Co., Ltd	96.15
Ningbo Hualei Tool Co., Ltd	96.15
Ningbo Jiufeng Electronic Tools	96.15
Ningbo Safewell International Holding Corp	14.82
Ningbo Xiunan International Co., Ltd	96.15
Pinghu Chenda Storage Office Equipment Co., Ltd	14.82
Pooke Technology Co., Ltd	14.82
Shanghai All-Fast International Trade Co., Ltd	14.82

⁷ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People's Republic of China," dated concurrently

with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁸ Jiangsu Tongrun Equipment Technology Co., Ltd.'s cross-owned affiliates include the following entities: Changshu Jack Factory; Changshu Tongrun Taron Import and Export Co., Ltd. (also known as

Changshu Tongrun Equipment Co., Ltd.); Changshu Tongrun Mechanical & Electrical Equipment Manufacture Co., Ltd.; Changshu Taron Machinery Equipment Manufacturing Co., Ltd.; and Changshu General Electrical Factory Co., Ltd.

Exporter/producer	Subsidy rate (percent <i>ad valorem</i>)
Shanghai All-Hop Industry Co., Ltd	14.82
Shanghai Delta International Trading	96.15
Shanghai Fairlong International Trading Co., Ltd	96.15
Shanghai ITPC Hardware Co., Ltd	14.82
Shanghai Legsteel Metal Products Co., Ltd	96.15
Shanghai Tung Hsing Technology Inc	96.15
Shining Golden Yida Welding & Cutting Machinery Manufacture Ltd	96.15
Suzhou Aomeijia Metallic Products Co., Ltd	96.15
Suzhou Goldenline Machinery Co., Ltd	96.15
Suzhou Xindadi Hardware Co., Ltd	14.82
Taixing Hutchin Mfg. Co., Ltd	14.82
Tong Ming Enterprise (Jiaxing) Co., Ltd	96.15
Trantex Product (Zhong Shan) Co., Ltd	14.82
Wuyi Yunlin Steel Products Co., Ltd	96.15
Yangzhou Huayu Pipe Fitting Co., Ltd	96.15
Yangzhou Triple Harvest Power Tools Limited	14.82
Zhangjiagang Houfeng Machinery Co., Ltd	96.15
Zhejiang KC Mechanical & Electrical	96.15
Zhejiang Zhenglian Corp	96.15
Zhuhai Shichang Metals Ltd	96.15
All Others	14.82

[FR Doc. 2023-06585 Filed 3-29-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Self-Certifications Under the Data Privacy Framework Program

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 30, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Leo Kim, ITA Paperwork Clearance Officer, International Trade Administration, Department of Commerce, Room 23016RA, 14th and

Constitution Avenue NW, Washington, DC 20230 (or via the internet at PRAComment@doc.gov). Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to David Ritchie, Senior Policy Advisor, International Trade Administration, Department of Commerce via email at dpf.program@trade.gov, or by telephone at 202-482-1512.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States, the European Union (EU), the United Kingdom (UK), and Switzerland share a commitment to enhancing privacy protection, the rule of law, and a recognition of the importance of transatlantic data flows to our respective citizens, economies, and societies, but take different approaches to doing so. Given those differences, the Department of Commerce (DOC) developed the EU-U.S. Data Privacy Framework (EU-U.S. DPF), the UK Extension to the EU-U.S. Data Privacy Framework (UK Extension to the EU-U.S. DPF), and the Swiss-U.S. Data Privacy Framework (Swiss-U.S. DPF) in consultation with the European Commission, the UK Government, the Swiss Federal Administration, industry, and other stakeholders. These arrangements were respectively developed to provide U.S. organizations reliable mechanisms for personal data transfers to the United States from the European Union, the United Kingdom,

and Switzerland while ensuring data protection that is consistent with EU, UK, and Swiss law.

The DOC is issuing the EU-U.S. DPF Principles and the Swiss-U.S. DPF Principles, including the respective sets of Supplemental Principles (collectively the Principles) and Annex I of the Principles, as well as the UK Extension to the EU-U.S. DPF under its statutory authority to foster, promote, and develop international commerce (15 U.S.C. 1512). The International Trade Administration (ITA) will administer and supervise the Data Privacy Framework program, including maintaining and making publicly available the Data Privacy Framework List, an authoritative list of U.S. organizations that have self-certified to the DOC and declared their commitment to adhere to the Principles pursuant to the EU-U.S. DPF and, as applicable, the UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF. On the basis of the Principles, Executive Order 14086, 28 CFR part 201, and accompanying letters and materials, including ITA's commitments regarding the administration and supervision of the Data Privacy Framework program, it is the DOC's expectation that the European Commission, the UK Government, and the Swiss Federal Administration will respectively recognize the adequacy of the protection provided by the EU-U.S. DPF, the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. DPF thereby enabling personal data transfers from each respective jurisdiction to U.S. organizations participating in the relevant part of the Data Privacy Framework program. The EU-U.S. DPF,

the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. DPF will not enter into effect until they have respectively received such recognition (*i.e.*, until such formal recognition enters into effect).

In order to participate in the EU-U.S. DPF and, as applicable, the UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF an organization must (a) be subject to the investigatory and enforcement powers of the Federal Trade Commission (FTC), the Department of Transportation (DOT), or another statutory body that will effectively ensure compliance with the Principles; (b) publicly declare its commitment to comply with the Principles; (c) publicly disclose its privacy policies in line with the Principles; and (d) fully implement them.

While the decision by an organization to self-certify its compliance pursuant to the EU-U.S. DPF and, as applicable, the UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF and by extension participate in the Data Privacy Framework program is voluntary; effective compliance is compulsory: organizations that self-certify to the DOC and publicly declare their commitment to adhere to the Principles must comply fully with the Principles. Organizations that only wish to self-certify their compliance pursuant to the EU-U.S. DPF and/or the Swiss-U.S. DPF may do so; however, organizations that wish to participate in the UK Extension to the EU-U.S. DPF must participate in the EU-U.S. DPF. Such organizations' commitment to comply with the Principles with regard to transfers of personal data from the European Union and, as applicable, the United Kingdom, and/or Switzerland must be reflected in their self-certification submissions to the DOC, and in their privacy policies. An organization's failure to comply with the Principles after its self-certification is enforceable by the FTC under Section 5 of the Federal Trade Commission (FTC) Act prohibiting unfair or deceptive acts in or affecting commerce (15 U.S.C. 45); by the DOT under 49 U.S.C. 41712 prohibiting a carrier or ticket agent from engaging in an unfair or deceptive practice in air transportation or the sale of air transportation; or under other laws or regulations prohibiting such acts.

To rely on the EU-U.S. DPF and, as applicable, the UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF for transfers of personal data from the European Union and, as applicable, the United Kingdom, and/or Switzerland an organization must self-certify its adherence to the Principles to the DOC,

and both be placed and remain on the Data Privacy Framework List. The DOC will update the Data Privacy Framework List on the basis of annual re-certification submissions made by participating organizations and by removing organizations when they voluntarily withdraw, fail to complete the annual re-certification in accordance with the DOC's procedures, or are found to persistently fail to comply. The DOC will also maintain and make available to the public an authoritative record of U.S. organizations that have been removed from the Data Privacy Framework List and will identify the reason each organization was removed. The aforementioned authoritative list and record will remain available to the public on the DOC's Data Privacy Framework program website. Any organization removed from the Data Privacy Framework List must cease making claims that it participates in or complies with the EU-U.S. DPF and, as applicable, the UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF and that it may receive personal information pursuant to same. Such an organization must nevertheless continue to apply the Principles to such personal information that it received while it participated in the EU-U.S. DPF and, as applicable, the UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF for as long as it retains such personal information.

To initially self-certify or subsequently re-certify for the EU-U.S. DPF and, as applicable, UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF, an organization must on each occasion provide to the DOC a submission that contains the relevant information specified in the Principles. The submission must be made via the DOC's Data Privacy Framework program website by an individual within the organization who is authorized to make representations on behalf of the organization and any of its covered U.S. entities regarding its adherence to the Principles. Such an organization must respond promptly to inquiries and other requests for information from the DOC relating to the organization's adherence to the Principles.

ITA has committed to follow up with organizations that have been or wish to be removed from the Data Privacy Framework List. ITA will direct organizations that allow their self-certifications to lapse to verify whether they intend to re-certify or instead intend to withdraw. An organization that intends to re-certify will be required to further verify to the DOC that during the lapse of its certification status it applied the Principles to

relevant personal data received in reliance on its participation in the Data Privacy Framework program and clarify what steps it will take to address the outstanding issues that have delayed its re-certification. An organization that intends to withdraw will be required to further verify to the DOC what it will do and/or has done (as applicable) with the relevant personal data that it received in reliance on its participation in the Data Privacy Framework program (*i.e.*, (a) retain such data, continue to apply the Principles to such data, and affirm to the DOC on an annual basis its commitment to apply the Principles to such data; (b) retain such data and provide "adequate" protection for such data by another authorized means; or (c) return or delete all such data by a specified date) and who within the organization will serve as an ongoing point of contact for Principles-related questions. Organizations will be required to provide such verification to the DOC by completing and submitting appropriate questionnaires to the DOC.

ITA has also committed to conduct compliance reviews on an ongoing basis, including, as appropriate, through sending detailed questionnaires to participating organizations. The DOC will require that a participating organization complete and submit to the DOC such a questionnaire when: (a) the DOC has received any specific, non-frivolous complaints about the organization's compliance with the Principles; (b) the organization does not respond satisfactorily to inquiries by the DOC for information relating to the organization's adherence to the Principles; or (c) there is credible evidence that the organization does not comply with its commitments under the EU-U.S. DPF and, as applicable, the UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF.

II. Method of Collection

Organizations would make their initial self-certification, as well as annual re-certification submissions under the Data Privacy Framework program (*i.e.*, the EU-U.S. DPF and, as applicable, the UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF) to the DOC online via the DOC's Data Privacy Framework program website (<https://www.dataprivacyframework.gov/>). An organization that already participates in the EU-U.S. DPF and intends to extend its participation to also cover personal data received from the United Kingdom would make its election to participate in the UK Extension to the EU-U.S. DPF either: (a) as part of its annual re-certification to the EU-U.S. DPF, or (b) outside of its

annual re-certification to the EU-U.S. DPF provided it makes that election no later than six months from the effective date for the UK Extension to the EU-U.S. DPF (n.b., in either scenario the organization would make the relevant submission to the DOC online via the DOC's Data Privacy Framework program website). Organizations would complete and submit Data Privacy Framework program questionnaires to the DOC online via the DOC's Data Privacy Framework program website or via email at dpf.program@trade.gov (as applicable) in accordance with Data Privacy Framework program requirements.

The DOC previously requested and obtained approval of analogous information collection that has allowed the DOC, as represented by ITA, to collect information from organizations in the United States to enable them to self-certify their commitment to comply with the EU-U.S. Privacy Shield Framework Principles and/or the Swiss-U.S. Privacy Shield Framework Principles (OMB Control No. 0625–0276). Pursuant to the EU-U.S. DPF, the EU-U.S. Privacy Shield Framework Principles will be amended as the “EU-U.S. Data Privacy Framework Principles”; and pursuant to the Swiss-U.S. DPF, the Swiss-U.S. Privacy Shield Framework Principles will be amended as the “Swiss-U.S. Data Privacy Framework Principles”. Organizations that self-certified their commitment to comply with the EU-U.S. Privacy Shield Framework Principles and/or the Swiss-U.S. Privacy Shield Framework Principles that wish to enjoy the benefits of participating in the EU-U.S. DPF and/or the Swiss-U.S. DPF (as applicable) must comply with the amended Principles once those amendments have entered into effect. More information on self-certification, including annual re-certification under the Data Privacy Framework program will be made available on the DOC's Data Privacy Framework program website (<https://www.dataprivacyframework.gov/>) once that is launched; however, such information will also be made available, as appropriate, on the DOC's Privacy Shield program website (<https://www.privacyshield.gov/welcome>).

III. Data

OMB Control Number: New Collection. Not yet assigned.

Form Number(s): None.

Type of Review: Regular submission, new information collection.

Affected Public: Primarily businesses or other for-profit organizations.

Estimated Number of Respondents: 4,000.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 3,062.

Estimated Total Annual Cost to Public: \$3,260,000.

Legal Authority: The DOC's statutory authority to foster, promote, and develop the foreign and domestic commerce of the United States (15 U.S.C. 1512).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–06645 Filed 3–29–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

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

SUMMARY: The U.S. Department of Commerce (Commerce) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period July 1, 2022, through December 31, 2022.

DATES: Comments must be submitted within 30 days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008), the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies. Commerce submitted its last subsidy report to Congress on December 30, 2022.

Request for Comments

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries which had exports accounting for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule of the United States (HTSUS) codes 4407.1100, 4407.1200, 4407.1300, 4407.1400, and 4407.1900, during the period July 1, 2022, through December 31, 2022. Official U.S. import data, published by the U.S. International Trade Commission's DataWeb, indicate that six countries (Austria, Brazil, Canada, Germany, Romania, and Sweden) exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports

of softwood lumber products. We intend to rely on similar six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period January 1, 2023, through June 30, 2023, to select the countries subject for the next report.

Under U.S. trade law, a subsidy exists where an authority: (i) provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred.¹

Parties should include in their comments: (1) the country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (no more than 3–4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

Submission of Comments

As specified above, to be assured of consideration, comments must be received no later than 30 days after the publication of this notice in the **Federal Register**. All comments must be submitted through the Federal eRulemaking Portal at <https://www.regulations.gov>, Docket No. ITA–2023–002. The materials in the docket will not be edited to remove identifying or contact information, and Commerce cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only.

All comments should be addressed to Ryan Majerus, Deputy Assistant Secretary for Policy and Negotiations, at U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

Dated: March 27, 2023.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2023–06610 Filed 3–29–23; 8:45 am]

BILLING CODE 3510–DS–P

¹ See section 771(5)(B) of the Tariff Act of 1930, as amended.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–042, C–570–043]

Stainless Steel Sheet and Strip From the People's Republic of China: Final Scope Ruling and Final Affirmative Determination of Circumvention for Exports From the Socialist Republic of Vietnam

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain stainless steel sheet and strip (SSSS) of Chinese-origin that has undergone further processing in the Socialist Republic of Vietnam (Vietnam) is merchandise covered by the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on SSSS from the People's Republic of China (China). Additionally, Commerce determines that SSSS that is completed in Vietnam using certain non-subject stainless steel flat-rolled inputs sourced from China, is circumventing the AD/CVD orders on SSSS from China. As a result, SSSS of Chinese-origin that has undergone further processing or completion in Vietnam will be subject to suspension of liquidation effective May 15, 2020.

DATES: Applicable March 30, 2023.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse, Office of the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6345.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 2022, Commerce published the preliminary scope ruling and preliminary affirmative determination of circumvention of the AD/CVD orders on SSSS from China.¹ In the *Preliminary Determinations*, we preliminarily found, pursuant to 19 CFR 351.225(k)(1), that SSSS of Chinese-origin that has undergone further processing in Vietnam is covered by the

scope of the *Orders*.² Additionally, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), we preliminarily determined that SSSS completed in Vietnam using certain non-subject stainless steel flat-rolled inputs³ of Chinese-origin is circumventing the *Orders*.⁴

From December 5 through 9, 2022, Commerce conducted on-site verifications of the information submitted by the mandatory respondents, POSCO VST Co, Ltd. and POSCO Vietnam Processing Center, Ltd., at these companies' facilities located outside Ho Chi Minh City, Vietnam.⁵ On December 29, 2022, Commerce extended the deadline for the final determinations of these circumvention and scope inquiries to April 4, 2023.⁶

On February 13, 2023, we received a case brief from Outokumpu Stainless USA LLC (Outokumpu), in which Outokumpu expressed its support of the *Preliminary Determinations*.⁷ Commerce also received a letter in support of Outokumpu's case brief from North American Stainless.⁸ No other interested parties commented on the *Preliminary Determinations*. Accordingly, we received no comments in opposition to our *Preliminary Determinations* and no requests for a public hearing from interested parties within the time period set forth in the *Preliminary Determinations*. Given that

² See *Preliminary Determinations*, 87 FR at 56627, and PDM at 27–28.

³ The term “certain non-subject stainless steel flat-rolled inputs” refers to stainless steel flat-rolled products that are not further worked than hot-rolled and/or of a thickness greater than 4.75 millimeters.

⁴ See *Preliminary Determinations*, 87 FR at 56627, and PDM at 27–28.

⁵ See Memoranda, “Verification of the Questionnaire Responses of POSCO VST Co., Ltd. in the Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Stainless Steel Sheet and Strip from the People's Republic of China Further Processed In, and Exported from, the Socialist Republic of Vietnam,” dated February 3, 2023; and, “Verification of the Questionnaire Responses of POSCO Vietnam Processing Center, Ltd. in the Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Stainless Steel Sheet and Strip from the People's Republic of China Further Processed In, and Exported from, the Socialist Republic of Vietnam,” dated February 3, 2023.

⁶ See Memorandum, “Stainless Steel Sheet and Strip from the People's Republic of China: Extension of Deadline for Issuing the Final Determinations in the Circumvention and Scope Inquiries,” dated December 29, 2022.

⁷ See Outokumpu's Letter, “Stainless Steel Sheet and Strip from the People's Republic of China: Case Brief Submitted on Behalf of Outokumpu Stainless USA LLC,” dated February 13, 2023.

⁸ See North American Stainless' Letter, “Stainless Steel Sheet and Strip from the People's Republic of China: North American Stainless' Submission in Support of Outokumpu's Case Brief,” dated February 13, 2023.

¹ See *Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Scope Ruling and Preliminary Affirmative Determination of Circumvention for Exports from the Socialist Republic of Vietnam*, 87 FR 56626 (September 15, 2022) (*Preliminary Determinations*), and accompanying Preliminary Decision Memorandum (PDM).

we received no comments in opposition to the *Preliminary Determinations*, we do not find it necessary to discuss these comments, which were in support of Commerce's decisions.

Scope of the Orders⁹

The product covered by the *Orders* is stainless steel sheet and strip. Subject merchandise includes SSSS that has been further processed in a third country, including but not limited to cold-rolling, annealing, tempering, polishing, aluminizing, coating, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in the country of manufacture of the SSSS. Excluded from the scope of the *Orders* are the following: (1) sheet and strip that is not annealed or otherwise heat treated and not pickled or otherwise descaled; (2) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); and (3) flat wire (*i.e.*, cold-rolled sections, with a mill edge, rectangular in shape, of a width of not more than 9.5 mm). For a complete description of the scope of the *Orders*, see Appendix I.¹⁰

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers SSSS completed in Vietnam using certain non-subject stainless steel flat-rolled inputs of Chinese-origin that is subsequently exported from Vietnam to the United States.

Merchandise Subject to the Scope Inquiry

This scope inquiry covers SSSS of Chinese-origin that has undergone further processing in Vietnam (including but not limited to cold-rolling, annealing, tempering, polishing, aluminizing, coating, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders*) that is subsequently exported to the United States.

Methodology

We conducted these circumvention and scope inquiries in accordance with section 781(b) of the Act, and 19 CFR 351.225(h), 351.225(b), and

351.225(k)(1).¹¹ For a full description of the methodology underlying Commerce's final determinations, see the Preliminary Decision Memorandum.¹² The Preliminary Decision Memorandum is a public document and 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>.

Final Determinations

As detailed in the *Preliminary Determinations*, pursuant to 19 CFR 351.225(k)(1), we continue to find that SSSS of Chinese-origin that has undergone further processing in Vietnam is covered by the scope of the *Orders*. Additionally, pursuant to section 781(b) of the Act, we determine that SSSS completed in Vietnam using certain non-subject stainless steel flat-rolled inputs of Chinese-origin is circumventing the *Orders*. Therefore, we determine that it is appropriate to include this merchandise within the scope of the *Orders* and to instruct U.S. Customs and Border Protection (CBP) to continue to suspend any entries of merchandise produced using Chinese-sourced inputs and exported from Vietnam to the United States. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Further, because Hoangvu Co., Ltd. (Hoangvu) and SK Networks Co., Ltd. (SK Networks) did not cooperate to the best of their ability in responding to Commerce's requests for information, we have based our determinations with respect to these companies on the facts available, with adverse inferences, pursuant to sections 776(a) and (b) of

the Act. In particular, as adverse facts available (AFA), we find that the SSSS exported to the United States by Hoangvu and SK Networks from Vietnam is merchandise covered by the scope of the *Orders*. Additionally, as AFA, we find that finished SSSS products exported by Hoangvu and SK Networks are completed in Vietnam using certain non-subject stainless steel flat-rolled inputs of Chinese-origin, and thus, are circumventing the *Orders*. Furthermore, as AFA, we continue to determine that Hoangvu and SK Networks, and their importers, are ineligible to certify that the SSSS exported by Hoangvu and SK Networks from Vietnam was produced using non-Chinese sourced inputs.

Continued Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(3), based on these final determinations in these circumvention and scope inquiries, Commerce will direct CBP to continue to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of SSSS completed in Vietnam using inputs manufactured in China, subsequently exported from Vietnam to the United States, and entered, or withdrawn from warehouse, for consumption on or after May 15, 2020, the date of publication of the notice of initiation of these scope and circumvention inquiries.¹³ The suspension of liquidation will remain in effect until further notice.

SSSS that is further processed or completed in Vietnam from stainless steel flat-rolled inputs that are not of Chinese-origin is not subject to these inquiries. Therefore, cash deposits are not required for such merchandise subject to certification requirements set forth below.¹⁴

For these final determinations, we continue to implement the certification process outlined in the *Preliminary Determinations*. Specifically, if an importer of SSSS from Vietnam claims that the SSSS was not produced using any stainless steel flat-rolled inputs of Chinese-origin, in order to not be subject to cash deposit requirements, the importer and exporter must meet the certification and documentation requirements described in Appendix II. An exporter of SSSS produced in Vietnam claiming that its SSSS was not

¹¹ On September 20, 2021, Commerce significantly revised its regulations pertaining to circumvention and scope inquiries, with an effective date of November 4, 2021. See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021). The newly promulgated 19 CFR 351.226 applies to circumvention inquiries for which a circumvention request is filed, as well as any circumvention inquiry self-initiated by Commerce, on or after November 4, 2021. The amendments to 19 CFR 351.225 apply to scope inquiries for which a scope ruling application is filed, as well as any scope inquiry self-initiated by Commerce, on or after November 4, 2021. We note that these circumvention and scope inquiries were initiated prior to the effective date of the new regulations, and, thus, any reference to the regulations is to the prior version of the regulations.

¹² See *Preliminary Determinations* PDM at 6–28.

¹³ See *Stainless Steel Sheet and Strip from the People's Republic of China: Initiation of Anti-Circumvention and Scope Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 85 FR 29401 (May 15, 2020).

¹⁴ See Appendix II for the certification requirements, and Appendices III and IV for the Importer and Exporter Certifications, respectively.

⁹ See *Stainless Steel Sheet and Strip from the People's Republic of China: Antidumping Duty Order*, 82 FR 16160 (April 3, 2017); see also *Stainless Steel Sheet and Strip from the People's Republic of China: Countervailing Duty Order*, 82 FR 16166 (April 3, 2017) (collectively, *Orders*).

¹⁰ See also *Preliminary Determinations* PDM at 5–6.

produced using any stainless steel flat-rolled inputs of Chinese-origin must prepare and maintain an Exporter Certification and documentation supporting the Exporter Certification (see Appendix IV). Additionally, importers of such SSSS must prepare and maintain an Importer Certification (see Appendix III), as well as documentation supporting the Importer Certification. In addition to the Importer Certification, the importer must also maintain a copy of the Exporter Certification (see Appendix IV) and relevant supporting documentation from its exporter of SSSS produced from stainless steel flat-rolled inputs that are not of Chinese-origin.

As described above, the two uncooperative and non-responsive companies (*i.e.*, Hoangvu and SK Networks), along with their importers, are not eligible to participate in the certification process at this time. These companies may request reconsideration of our denial of the certification process in a future segment of the proceeding, *i.e.*, a changed circumstances review or administrative review.¹⁵

Administrative Protective Order

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

Notification to Interested Parties

These final scope and affirmative circumvention determinations are issued and published in accordance with section 781(b) of the Act and 19 CFR 351.225(f) and (h).

Dated: March 23, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Orders

The merchandise covered by the *Orders* is stainless sheet and strip, whether in coils or straight lengths. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product with a width that is greater than 9.5 mm and with a thickness of 0.3048 mm and greater but less than 4.75 mm, and that is annealed or otherwise heat treated, and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, annealed, tempered, polished, aluminized, coated, painted, varnished, trimmed, cut, punched, or slit, *etc.*) provided that it maintains the specific dimensions of sheet and strip set forth above following such processing. The products described include products regardless of shape, and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above: (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of the *Orders* unless specifically excluded.

Subject merchandise includes stainless sheet and strip that has been further processed in a third country, including but not limited to cold-rolling, annealing, tempering, polishing, aluminizing, coating, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in the country of manufacture of the stainless sheet and strip.

Excluded from the scope of the *Orders* are the following: (1) sheet and strip that is not annealed or otherwise heat treated and not pickled or otherwise descaled; (2) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); and (3) flat wire (*i.e.*, cold-rolled sections, with a mill edge, rectangular in shape, of a width of not more than 9.5 mm).

The products under the *Orders* are currently classifiable under Harmonized

Tariff Schedule of the United States (HTSUS) subheadings 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.13.0081, 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.23.0030, 7219.23.0060, 7219.24.0030, 7219.24.0060, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.32.0045, 7219.32.0060, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.33.0045, 7219.33.0070, 7219.33.0080, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.34.0050, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.35.0050, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

Appendix II

Certification Requirements

If a company imports stainless steel sheet and strip (SSSS) from Vietnam and claims that the entry was not produced from Chinese-sourced stainless steel flat-rolled inputs and, thus, is not subject to the antidumping duty (AD) and countervailing duty (CVD) orders¹⁶ on SSSS from China, then the importer is required to complete and maintain the Importer Certification attached hereto as Appendix III and retain all supporting documentation. The importer is further required to maintain a copy of the Exporter Certification, attached as Appendix IV, and retain all supporting documentation. The Importer Certification must be completed, signed, and dated by the time of filing of the entry summary for the relevant importation. Where the importer uses a broker to facilitate the entry process, it should obtain the entry number from the broker. Agents of the importer, such as brokers, however, are not permitted to make this certification on behalf of the importer.

All importers of SSSS from Vietnam are eligible for the certification process detailed below, with the exception that entries of SSSS produced and/or exported by Hoangvu Co., Ltd. and SK Networks Co., Ltd. are ineligible for certification.

The exporter is required to complete and maintain the Exporter Certification, attached as Appendix IV, and is further required to provide the importer a copy of that certification and all supporting documentation (*e.g.*, invoice, purchase order, production records, *etc.*). The Exporter Certification must be completed, signed, and

¹⁵ See, *e.g.*, *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Anti-Circumvention Inquiry*, 85 FR 9737, 9739 (February 20, 2020) (“However, Protech may request reconsideration of our denial of the certification process in a future segment of the proceeding, *i.e.*, a changed circumstances review or administrative review.”); see also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 85 FR 86905 (December 31, 2020) (“... Protech is eligible to participate in a certification process because Protech has demonstrated that it can identify diamond sawblades that it produced in Canada using non-Chinese cores and Chinese segments.”).

¹⁶ See *Stainless Steel Sheet and Strip from the People's Republic of China: Antidumping Duty Order*, 82 FR 16160 (April 3, 2017); see also *Stainless Steel Sheet and Strip from the People's Republic of China: Countervailing Duty Order*, 82 FR 16166 (April 3, 2017) (collectively, *Orders*).

dated by the time of shipment of the relevant entries (except as noted below). The Exporter Certification should be completed by the party selling the subject merchandise manufactured in Vietnam to the United States.

The importer will not be required to submit the certifications or supporting documentation to U.S. Customs and Border Protection (CBP) as part of the entry process. However, the importer and exporter will be required to present the certifications, and supporting documentation, to the U.S. Department of Commerce (Commerce) and/or CBP, as applicable, upon request by the respective agency. Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. The importer and exporter are required to maintain the certifications and supporting documentation for the later of: (1) a period of five years from the date of entry; or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.

For SSSS exported from Vietnam that was produced using Chinese-sourced stainless steel flat-rolled inputs subject to this inquiry that has been found to be circumventing the *Orders*, Commerce has established the following third-country case numbers in the Automated Commercial Environment (ACE): A-552-042 and C-552-043. For SSSS exported from Vietnam that is merchandise covered by the scope of the *Orders*, where the country of origin does not change for CBP's reporting purposes, importers should report such entries under the case numbers for the *Orders*: A-570-042 and C-570-043. For SSSS exported from Vietnam that is merchandise covered by the scope of the *Orders*, where the country-of-origin changes for CBP's reporting purposes, importers should report such entries under the following third-country case numbers: A-552-042 and C-552-043.

If it is determined that the certification and/or documentation requirements in a certification have not been met, Commerce intends to instruct CBP to suspend, under the appropriate case numbers, either those established for the *Orders*, A-570-042/C-570-043, or the third country case numbers, A-552-042/C-552-043, all unliquidated entries for which these requirements were not met and require the importer to post applicable AD and CVD cash deposits equal to the rates as determined by Commerce. Entries suspended under A-570-042/C-570-043/A-552-042/C-552-043 will be liquidated pursuant to applicable administrative reviews of the *Orders* or through the automatic liquidation process.

For shipments and/or entries suspended pursuant to the preliminary determinations of these scope and circumvention inquiries that were shipped and/or entered, or withdrawn from warehouse, for consumption during the period on or after May 15, 2020 (the date of initiation of these scope and circumvention inquiries) through the date of publication of the preliminary determination in the **Federal Register**, for which certifications are required, importers and exporters should complete the required certification, as soon as practicable but not

later than 45 days after the publication of the preliminary determinations in the **Federal Register**. Accordingly, where appropriate, the relevant bullet in the certification should be edited to reflect that the certification was completed within this time frame.

Specifically, exporters should complete the language in Paragraph G in the Exporter Certification that reads: "The shipments/products referenced herein shipped before mm/dd/yyyy, the date on which Commerce published notice of its preliminary scope and circumvention findings in the **Federal Register**. This certification was completed on mm/dd/yyyy, within 45 days of the **Federal Register** notice publication." For such entries/shipments, importers and exporters each have the option to complete a blanket certification covering multiple entries/shipments, individual certifications for each entry/shipment, or a combination thereof. The Exporter Certifications should be maintained by both the importer and exporter and provided to CBP or Commerce only upon request by the respective agency. The exporter must provide the importer a copy of the Exporter Certification within 45 days of the publication of the preliminary determination in the **Federal Register**.

For shipments and/or entries suspended pursuant to the preliminary determinations of these scope and circumvention inquiries that were shipped and/or entered, or withdrawn from warehouse, for consumption within 30 days of the date of publication of the preliminary determination in the **Federal Register**, for which certifications are required, importers and exporters should complete the required certification, as soon as practicable but not later than 45 days after the publication of the preliminary determinations in the **Federal Register**.

Accordingly, where appropriate, the relevant bullet in the certification should be edited to reflect that the certification was completed within this time frame. Specifically, exporters should complete the language in Paragraph G in the Exporter Certification that reads: "The shipments/products referenced herein shipped on mm/dd/yyyy. This certification was completed on mm/dd/yyyy, within 45 days of the date on which Commerce published its preliminary scope and circumvention findings in the **Federal Register**." For such entries/shipments, importers and exporters each have the option to complete a blanket certification covering multiple entries/shipments, individual certifications for each entry/shipment, or a combination thereof. The Exporter Certifications should be maintained by both the importer and exporter and provided to CBP or Commerce only upon request by the respective agency. The exporter must provide the importer a copy of the Exporter Certification within 45 days of the publication of the preliminary determination in the **Federal Register**.

For shipments and/or entries after 30 days from the date of publication of the preliminary determination in the **Federal Register**, for which certifications are required, importers and exporters should complete the required certification at or prior to the date of entry summary and exporters should complete the required certification

and provide it to the importer at or prior to the date of shipment. Specifically, exporters should complete the language in Paragraph G in the Exporter Certification that reads: "I understand that {EXPORTING COMPANY} must provide this Exporter Certification to the U.S. importer by the time of shipment."

For unliquidated entries (and entries for which liquidation has not become final) of merchandise entered as non-AD/CVD type entries (e.g., type 01) that were shipped and/or entered, or withdrawn from warehouse, for consumption in the United States during the period, May 15, 2020 (the date of initiation of these scope and circumvention inquiries) through the date of publication of the preliminary determination in the **Federal Register**, that is merchandise covered by the scope of the *Orders* or was produced using Chinese-sourced stainless steel flat-rolled inputs subject to this inquiry that have been found to be circumventing the *Orders*, importers should file a Post Summary Correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-AD/CVD type entries to AD/CVD type entries (e.g., type 01 to type 03). For such shipments, the Exporter Certifications should be completed as soon as practicable, but not later than 45 days after publication of the preliminary determination in the **Federal Register**. Importers should report those AD/CVD type entries of merchandise that is covered by the scope of the *Orders*, under the case numbers for the *Orders*, A-570-042/C-570-043, or A-552-042/C-552-043, as appropriate. Importers should report those AD/CVD type entries that were produced using Chinese-sourced stainless steel flat-rolled inputs subject to this inquiry that have been found to be circumventing the *Orders*, using the third-country case numbers, A-552-042/C-552-043. Similarly, the importer should pay cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties.

Appendix III

Importer Certification

I hereby certify that:

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

B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the stainless steel sheet and strip (SSSS) produced in Vietnam that entered under entry summary number(s), identified below, and are covered by this certification. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, the importer should have "direct personal knowledge" of the importation of the product (e.g., the name of the exporter) in its records;

C. I have personal knowledge of the facts regarding the production of the imported products covered by this certification. "Personal knowledge" includes facts obtained from another party, (e.g., correspondence received by the importer (or exporter) from the producer regarding the

source of the SSSS inputs used to produce the imported products);

D. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:

Entry Summary Line Item #:

Foreign Seller:

Foreign Seller's Address:

Foreign Seller's Invoice #:

Foreign Seller's Invoice Line Item #:

Country of Origin of Stainless Steel Flat-Rolled Inputs:

If the importer is acting on behalf of the first U.S. customer, complete this paragraph:

E. The SSSS covered by this certification was imported by {IMPORTING COMPANY} on behalf of {U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER};

F. The SSSS covered by this certification does not contain stainless steel flat-rolled inputs produced in the People's Republic of China (China);

G. I understand that {IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, certificates of origin, product data sheets, mill test reports, productions records, invoices, *etc.*) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;

H. I understand that {IMPORTING COMPANY} is required to provide this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce);

I. I understand that {IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to the production and/or export of the imported merchandise identified above), and any supporting documentation provided by the exporter to the importer, for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries;

J. I understand that {IMPORTING COMPANY} is required to maintain and provide a copy of the exporter's certification and supporting documentation provided by the exporter to the importer, upon request, to CBP and/or Commerce;

K. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

L. I understand that failure to maintain the required certification and supporting documentation and/or failure to substantiate the claims made herein and/or failure to allow CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on SSSS from China. I understand that such finding will result in:

○ suspension of liquidation of all unliquidated entries (and entries for which

liquidation has not become final) for which these requirements were not met;

○ the requirement that the importer post applicable AD and/or CVD cash deposits (as appropriate) equal to the rates determined by Commerce; and

○ the revocation of {IMPORTING COMPANY}'s privilege to certify that future imports of SSSS were not produced using stainless steel flat-rolled inputs sourced from China subject to these certifications.

M. I understand that agents of the importer, such as brokers, are not permitted to make this certification;

N. This certification was completed by the time of filing the entry summary or within 45 days of the date on which Commerce published notice of its preliminary scope and circumvention findings in the **Federal Register**; and

O. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE}

{DATE}

Appendix IV

Exporter Certification

I hereby certify that:

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

B. I have direct personal knowledge of the facts regarding the production and exportation in the Customs territory of the United States of the stainless steel sheet and strip (SSSS) identified below. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own books and records. For example, an exporter should have "direct personal knowledge" of the producer's identity and location;

C. The SSSS covered by this certification does not contain stainless steel flat-rolled inputs produced in the People's Republic of China (China);

D. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:

Foreign Seller's Invoice to U.S. Customer

Line item #:

Producer's Invoice # to Foreign Seller: (*If the foreign seller and the producer are the same party, put NA here.*)

Producer's Invoice # Foreign Seller: (*If the foreign seller and the producer are the same party, put NA here.*)

Producer of Stainless Steel Flat-Rolled Inputs' Name:

Location (Country) of Producer of Stainless Steel Flat-Rolled Inputs:

E. The SSSS products covered by this certification were shipped to {NAME OF U.S. PARTY TO WHOM MERCHANDISE WAS SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED};

F. I understand that {EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product data sheets, mill test reports, productions records, invoices, *etc.*) for the later of: (1) a period of five years from the date of entry; or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;

G. The shipments/products referenced herein shipped before mm/dd/yyyy, the date on which Commerce published notice of its preliminary scope and circumvention findings in the **Federal Register**. This certification was completed on mm/dd/yyyy, within 45 days of the **Federal Register** notice publication.

{Or}

The shipments/products referenced herein shipped on mm/dd/yyyy. This certification was completed on mm/dd/yyyy, within 45 days of the date on which Commerce published its preliminary scope and circumvention findings in the **Federal Register**.

{Or}

I understand that {EXPORTING COMPANY} must provide this Exporter Certification to the U.S. importer by the time of shipment;

H. I understand that failure to maintain the required certification and supporting documentation, failure to substantiate the claims made herein, and/or failure to allow U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on SSSS from China. I understand that such a finding will result in:

○ suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

○ the requirement that the importer post applicable AD and/or CVD cash deposits (as appropriate) equal to the rates as determined by Commerce; and

○ the revocation of {EXPORTING COMPANY}'s privilege to certify that future imports of SSSS were not produced using stainless steel flat-rolled inputs sourced from China subject to these certifications.

I. This certification was completed at time of shipment or within 45 days of the date on which Commerce published notice of its preliminary scope and anti-circumvention findings in the **Federal Register**; and

J. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE}

{DATE}

[FR Doc. 2023-06582 Filed 3-29-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Public Meeting of the Ocean Exploration Advisory Board**

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Ocean Exploration Advisory Board (OEAB). OEAB members will discuss and provide advice on the Federal ocean exploration program, with a particular emphasis on the topics identified in the section on Matters to Be Considered.

DATES: The announced meeting is scheduled for Tuesday, April 25, 2023 and April 26, 2023 from 9:00 a.m.–4:00 p.m. (EDT).

ADDRESSES: This will be an in-person meeting. Information about how to participate or observe virtually will be posted to the OEAB website at <https://oeab.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Mr. David Turner, Designated Federal Officer, Ocean Exploration Advisory Board, National Oceanic and Atmospheric Administration, David.Turner@NOAA.gov or (859) 327-9661.

SUPPLEMENTARY INFORMATION: NOAA established the OEAB under the Federal Advisory Committee Act (FACA) and legislation that gives the agency statutory authority to operate an ocean exploration program and to coordinate a national program of ocean exploration. The OEAB advises NOAA leadership on strategic planning, exploration priorities, competitive ocean exploration grant programs, and other matters as the NOAA Administrator requests.

OEAB members represent government agencies, the private sector, academic institutions, and not-for-profit institutions involved in all facets of ocean exploration—from advanced technology to citizen exploration.

In addition to advising NOAA leadership, NOAA expects the OEAB to help to define and develop a national program of ocean exploration—a network of stakeholders and

partnerships advancing national priorities for ocean exploration.

Matters To Be Considered: The OEAB will receive an overview and implications of the FY22 National Defense Authorization Act; be briefed on the status of the Ocean Exploration Cooperative Institute; identify and develop meaningful performance indicators for the national Ocean Exploration program; discuss ideas for incentivizing data operability across the Ocean Exploration community; and, propose a set of recommendations to improve data availability among government, commercial, academic, and philanthropic entities. The board will discuss and deliberate on these topics. The agenda and other meeting materials will be made available on the OEAB website at <https://oeab.noaa.gov/>.

Status: The meeting will be open to the public via remote access. Please check the agenda on the OEAB website to confirm the public comment period schedule.

The OEAB expects that public statements at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to three minutes. The Designated Federal Officer must receive written comments by April 17, 2023, to provide sufficient time for OEAB review. Written comments received after April 17, 2023, will be distributed to the OEAB but may not be reviewed prior to the meeting date. Comments should be submitted to Designated Federal Officer David.Turner@NOAA.gov.

Special Accommodations: Requests for sign language interpretation or other auxiliary aids should be directed to the Designated Federal Officer by April 17, 2023.

David Holst,

*Chief Financial and Administrative Officer,
Office of Oceanic and Atmospheric Research,
National Oceanic and Atmospheric
Administration.*

[FR Doc. 2023-06574 Filed 3-29-23; 8:45 am]

BILLING CODE 3510-KA-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XC667]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Offshore of New Jersey and New York

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Atlantic Shores Offshore Wind, LLC (Atlantic Shores) for authorization to take marine mammals incidental to marine site characterization offshore of New Jersey and New York in the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Area OCS-A 0499 and OCS-A 0549 and associated export cable route (ECR) area. The activities described in Atlantic Shores' request, the overall survey duration, the project location, and the acoustic sources proposed for use are identical to what was previously analyzed in support of the IHA issued by NMFS to Atlantic Shores for the 2022 site characterization surveys (2022 IHA). All proposed mitigation, monitoring, and reporting requirements remain the same. While Atlantic Shores' planned activity would qualify for renewal of the 2022 IHA, due to the availability of updated marine mammal density data (<https://seamap.env.duke.edu/models/Duke/EC/>), which NMFS has determined represents the best available scientific data. NMFS has determined it appropriate to provide a 30-day period for the public to comment on this proposed action. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal IHA that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and

agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 1, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to ITP.Potlock@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed

incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notification prior to concluding our NEPA process or making a final decision on the IHA request.

History of Request

On August 16, 2021, NMFS received a request from Atlantic Shores for an IHA to take marine mammals incidental to high-resolution geophysical (HRG) marine site characterization surveys offshore of New Jersey and New York in the area of BOEM Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS-A 0499 and associated ECR area. Atlantic Shores requested authorization to take small numbers of up to 15 species of marine

mammals, comprising 13 cetacean species and two pinniped species, by Level B harassment only. NMFS published a notice of the proposed IHA in the **Federal Register** on January 27, 2022 (87 FR 4200). After a 30-day public comment period and consideration of all public comments received, we subsequently issued the IHA on April 22, 2022 (87 FR 24103), which is effective from April 20, 2022 through April 19, 2023. A minor correction notice was published on May 5, 2022 (87 FR 26726).

Atlantic Shores conducted the required marine mammal mitigation and monitoring and did not exceed the authorized levels of take under previous IHAs issued for surveys offshore of New York and New Jersey (see 85 FR 21198, April 16, 2020 and 86 FR 21289, April 22, 2021). These previous monitoring results are available to the public on our website: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-characterization>.

On December 27, 2022, NMFS received a request from Atlantic Shores for an IHA to take marine mammals incidental to HRG marine site characterization surveys offshore of New Jersey and New York in the areas of BOEM Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS Lease Area OCS-A 0499 and OCS-A 0549 and associated ECR area (Note BOEM segmented Lease Area OCS-A 0499 into Lease Areas OCS-A 0499 and 0549; thus, the physical lease area is the same as described in the 2022 IHA. More information can be found on BOEM's website (<https://www.boem.gov/renewable-energy/state-activities/new-jersey/atlantic-shores-north-ocs-0549>). Following NMFS' review of the application, Atlantic Shores submitted a revised request. The application was deemed adequate and complete on January 10, 2023 (the 2023 Request). Atlantic Shores' request is for take of 15 species of marine mammals, comprising 13 cetacean and 2 pinniped stocks, by Level B harassment only. Neither Atlantic Shores nor NMFS, expect serious injury or mortality to result from this activity, and therefore, an IHA is appropriate. Take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use.

This request is identical to the 2022 IHA. However, NMFS has determined a renewal of the 2022 IHA is not appropriate due to Duke University's Marine Geospatial Ecology Laboratory's

updated marine mammal density information (June 20, 2022) for all species in the project area (<https://seamap.env.duke.edu/models/Duke/EC/>). NMFS relies substantially herein, as appropriate, on the information previously presented in notices associated with issuance of the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022).

Description of the Proposed Activity and Anticipated Impacts

Overview

Atlantic Shores proposes to conduct geotechnical and HRG marine site characterization surveys in BOEM Lease Areas OCS-A 0499 and OCS-A-0549 and along potential submarine ECRs

(ECRs North and South) to landfall locations in either New York or New Jersey. The purpose of the proposed surveys are to support the site characterization, siting, and engineering design of offshore wind project facilities, including wind turbine generators, offshore substations, and submarine cables within the Lease Areas and along the ECRs. As many as three survey vessels may operate concurrently as part of the proposed surveys. During survey effort, the vessels would operate at a maximum speed of 3.5 knots (4 miles per hour). Underwater sound resulting from Atlantic Shores' proposed activities has the potential to result in incidental take of marine mammals in the form of Level B harassment.

Dates and Duration

The proposed activity is planned to begin once an IHA is issued and estimated to require up to 360 survey days across a maximum of three vessels operating concurrently over the course of the one year period of effectiveness of the proposed IHA (Table 1). A "survey day" is defined as a 24-hour activity period in which active acoustic sound sources are used. This schedule is inclusive of any inclement weather downtime and crew transfers. It is expected that each vessel would cover approximately 55 kilometers (km) of track line per day based on Atlantic Shores' data acquisition efficiency expectations.

TABLE 1—NUMBER OF SURVEY DAYS THAT ATLANTIC SHORES PLANS TO PERFORM THE DESCRIBED HRG SURVEY ACTIVITIES

Survey area		Number of active survey days expected ¹	
Lease Areas	OCS-A-0499	50	120 days total.
	OCS-A-0549	70	
Export Cable Route North (ECR North)		180	60
Export Cable Route South (ECR South)		60	

¹ Surveys in each area may temporally overlap; therefore, actual number of days of activity in a given year may be less than 360.

Specific Geographic Region

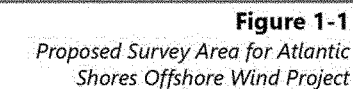
Atlantic Shores' proposed activities would occur in the Northwest Atlantic Ocean within Federal and state waters offshore of New York and New Jersey in BOEM Lease Area OCS-A 0499 and OCS-A 0549 and associated ECR area to landfall locations in New York or New Jersey (see Figure 1). Overall, the survey area is approximately 1,450,006 acres (5,868 square kilometers (km²)) and

extends approximately 24 nautical miles (44 km) offshore. Water depths in the Lease Areas and surrounding ECRs are estimated to be approximately 5 to 40 meters (m; 16 to 131 feet (ft)).

NMFS notes that while this proposed IHA would occur on two Lease Areas (0499 and 0549) and the 2022 IHA occurred on only one Lease Area (0499), this is the result of the BOEM's segregation of 0499 into two lease areas (*i.e.*, 0499 and 0549). However, the

planned survey activity would occur in the same location as the 2022 IHA (see Figure 1). Furthermore, the survey area is the same size as the survey area under the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022). More information can be found on BOEM's website (<https://www.boem.gov/renewable-energy/state-activities/new-jersey/atlantic-shores-north-ocs-0549>).

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A detailed description of the proposed specified activities can be

found in the previous **Federal Register** notices (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022) and supplementary documents. The specific geographic region; duration (360 total

survey days); and nature of the specified activities, including the types of HRG equipment planned for use (sparkers and CHIRPs), daily trackline distances (55 km per day), and number of survey vessels (up to three operating concurrently), are identical to those described in the previous notices.

Atlantic Shores plans to conduct geotechnical surveys, which consists of identical activities (*i.e.*, drilling of sample boreholes, deep cone penetration tests (CPTs), and shallow CPTs) previously described in its application for the 2022 IHA (87 FR 4200, January 27, 2022 and 87 FR 24103, April 22, 2022). Consistent with NMFS' previous analysis of these activities, no take of marine mammals is expected to occur as a result of geotechnical survey activities. As a result, these activities will not be discussed further herein.

Description of Marine Mammals

A description of the marine mammals in the area of the activities can be found in the previous documents and notices for the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022), which remains applicable to this proposed IHA. NMFS reviewed the most recent draft Stock Assessment Reports (SARs, found on NMFS' website at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>), up-to-date information on relevant Unusual Mortality Events (UMEs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events>), and recent scientific literature and determined that no new information affects our original analysis of impacts under the 2022 IHA.

NMFS notes that, since issuance of the 2022 IHA, a new SAR is available for the North Atlantic right whale

(NARW). Estimated abundance for the species declined from 368 to 338. However, this change does not affect our analysis of impacts, as described under the 2022 IHA. Additionally, on August 1, 2022, NMFS announced proposed changes to the existing NARW vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered NARWs from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published of the effective date, NMFS would also notify Atlantic Shores if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer applicable.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine

mammals and their habitat may be found in the documents supporting the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022). At present, there is no new information on potential effects that would impact our analysis.

Estimated Take

A detailed description of the methods used to estimate take anticipated to occur incidental to the project is found in the previous **Federal Register** notices (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022). The methods of estimating take are identical to those used in the 2022 IHA. We updated the marine mammal densities based on new information (Roberts *et al.*, 2016; Roberts and Halpin, 2022), available online at: <https://seamap.env.duke.edu/models/Duke/EC/>. We refer the reader to Table 4 in the ITA Request from Atlantic Shores for specific density values used in the analysis. The ITA request is available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

The take that NMFS proposes for authorization can be found in Table 2 below. Table 2 presents the results of Atlantic Shores' density-based calculations for the combined Lease Area (0499 and 0549) and the two ECRs (North and South). For comparative purposes, we have provided the 2022 IHA authorized take (87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022). NMFS notes that take by Level A harassment was not requested nor does NMFS anticipate that it could occur. Therefore, NMFS has not proposed to authorize any take by Level A harassment. Mortality or serious injury is neither anticipated to occur nor proposed for authorization.

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Table 2—Total Estimated Take, By Level B Harassment Only, Relative To Population Size For The 2023 Proposed HRG Surveys.

Marine Mammal Species	Scientific Name	Stock	Estimated Population	Location-specific Calculated Take			Total Calculated Take	AMAPPS Group Size Adjustments	Take Authorized Under Previous 2022 IHA	Proposed 2023 IHA	
				Lease Area	ECR North	ECR South				Take Proposed for Authorization	Percentage of Population Proposed to be Taken
Mysticetes											
North Atlantic right whale	<i>Eubalaena glacialis</i>	Western North Atlantic	338	1.1	1.3	0.7	3.1	2	17	3	0.89
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	1,396	1.8	2.8	0.8	5.4	2	8	5	0.36
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic	6,802	2.8	2.5	0.7	6	1	5	6	0.09
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia	6,292	0.9	0.8	0.2	1.9	1	2	2	0.03
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian East Coast	21,968	10.4	11.5	2.0	23.9	1	2	24	0.11
Odontocetes											
Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic	4,349	0.1	0.1	0.0	0.2	2	1	2	0.05
Long-finned pilot whale ^b	<i>Globicephala melas</i>	Western North Atlantic	39,215	0.3	0.1	0.0	0.4	8 ^f	20	20	0.05
Bottlenose dolphin ^e	<i>Tursiops truncatus</i>	Western North Atlantic, Northern Migratory Coastal	6,639	154.2	359.5	714.2	1,227.9	10	385	1,228	18.5
		Western North Atlantic, Offshore	62,851	15.2	359.5	714.2	1,088.9		1,175	1,089	1.73
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic	172,974	48.1	46.4	5.2	99.7	30	560	100	0.06

Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic	93,233	9.0	6.8	0.8	16.6	12	17	17
Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic	39,921	1.0	1.0	0.2	2.2	24	100	50
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic	35,215	0.6	0.4	0.0	1.0	7	30	30
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy	95,543	67.3	61.2	13.7	142.2	3	282	142
Phocid pinniped										
Gray seal	<i>Halichoerus grypus</i>	Western North Atlantic	27,300 ^a	277.2	333.9	124.7	735.8	n/a ^d	426	736
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic	61,336	277.2	333.9	124.7	735.8	n/a ^d	426	736

a - Although the calculated take rounds to zero, to be conservative in the event a lone sperm whale is observed in the area, NMFS has proposed take assuming a group size of 2 animals.

b - All pilot whales that may be encountered are assumed to be long finned. Roberts and Halpin (2022) density information does not distinguish between species. However, pilot whales encountered off of New Jersey and points north are likely to be long finned, as the species has a more northerly distribution.

c - Takes of bottlenose dolphins were attributed to stock based on the 20-m isobath. All animals shoreward of the 20-m isobath were assumed to belong to the coastal stock and all bottlenose dolphins seaward of the 20-m isobath were assumed to be from the offshore stock.

d - No AMAPPS data was available for seals.

e - NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600. This value was used in the percentage of stock abundance estimated to be taken by the proposed project.

f - A group size adjustments for long-finned pilot whales (n=20) used sighting data collected by Atlantic Shores during past surveys (Atlantic Shores Offshore Wind, 2021). This value was used instead of the AMAPPS data.

Proposed Mitigation

The proposed mitigation measures are identical to those included in the **Federal Register** notice announcing the final 2022 IHA (87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022) and the discussion of the least practicable adverse impact included in that document remains accurate. The measures proposed for inclusion in this IHA are found below.

Atlantic Shores must also abide by all the marine mammal relevant conditions in the NOAA Fisheries Greater Atlantic Regional Office (GARFO) programmatic consultation (specifically Project Design Criteria (PDC) 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (NOAA GARFO, 2021; <https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation>), pursuant to Section 7 of the Endangered Species Act.

Marine Mammal Exclusion Zones and Level B Harassment Zones

Marine mammal Exclusion Zones will be established around the HRG survey equipment and monitored by PSOs. These PSOs will be NMFS-approved visual PSOs. Based upon the acoustic source in use (impulsive: sparkers; non-impulsive: non-parametric sub-bottom profilers), a minimum of one PSO must be on duty, per source vessel, during daylight hours and two PSOs must be on duty, per source vessel, during nighttime hours. These PSO will monitor Exclusion Zones based upon the radial distance from the acoustic source rather than being based around the vessel itself. The Exclusion Zone distances are as follows:

- A 500 m Exclusion Zone for NARWs during use of specified acoustic sources (impulsive: sparkers; non-impulsive: non-parametric sub-bottom profilers).
- A 100 m Exclusion Zone for all other marine mammals (excluding NARWs) during use of specified acoustic sources (except as specified below).

All visual monitoring must begin no less than 30 minutes prior to the initiation of the specified acoustic source and must continue until 30 minutes after use of specified acoustic sources ceases.

If a marine mammal were detected approaching or entering the Exclusion Zones during the HRG survey, the vessel

operator will adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the site-specific training to be provided to the survey team.

Ramp-Up of Survey Equipment and Pre-Clearance of the Exclusion Zones

When technically feasible, a ramp-up procedure will be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. A ramp-up of sources will begin with the powering up of the smallest acoustic HRG equipment at half power for five minutes and then proceed to full power. The ramp-up procedure will be used in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power. When technically feasible, the power will then be gradually turned up and other acoustic sources would be added. All ramp-ups shall be scheduled so as to minimize the time spent with the source being activated.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective Exclusion Zone. Ramp-up will continue if the animal has been observed exiting its respective Exclusion Zone or until an additional time period has elapsed with no further sighting (*i.e.*, 15 minutes for small odontocetes and seals; 30 minutes for all other species).

Atlantic Shores will implement a 30-minute pre-clearance period of the Exclusion Zones prior to the initiation of ramp-up of HRG equipment. The operator must notify a designated PSO of the planned start of ramp-up where the notification time should not be less than 60 minutes prior to the planned ramp-up. This will allow the PSOs to monitor the Exclusion Zones for 30 minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Atlantic Shores must receive confirmation from the PSO that the Exclusion Zone is clear prior to proceeding. During this 30-minute pre-start clearance period, the entire applicable Exclusion Zones must be visible. The exception to this would be in situations where ramp-up may occur during periods of poor visibility (inclusive of nighttime) as long as appropriate visual monitoring has occurred with no detections of marine mammals in 30 minutes prior to the beginning of ramp-up. Acoustic source activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

During this period, the Exclusion Zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective Exclusion Zone. If a marine mammal is observed within an Exclusion Zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective Exclusion Zone or until an additional time period has elapsed with no further sighting (*i.e.*, 15 minutes for small odontocetes and pinnipeds; 30 minutes for all other species). If a marine mammal enters the Exclusion Zone during ramp-up, ramp-up activities must cease and the source must be shut down. Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zones.

The pre-clearance zones will be:

- 500 m for all ESA-listed species (North Atlantic right, sei, fin, sperm whales); and
- 100 m for all other marine mammals.

If any marine mammal species that are listed under the ESA are observed within the clearance zones, the 30-minute clock must be paused. If the PSO confirms the animal has exited the zone and headed away from the survey vessel, the 30-minute clock that was paused may resume. The pre-clearance clock will reset to 30 minutes if the animal dives or visual contact is otherwise lost.

If the acoustic source is shut down for brief periods (*i.e.*, less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.*, mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of marine mammals have occurred within the applicable Exclusion Zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Activation of survey equipment through ramp-up procedures may not occur when visual detection of marine mammals within the pre-clearance zone is not expected to be effective (*e.g.*, during inclement conditions such as heavy rain or fog).

The acoustic source(s) must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided.

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment will be required if a marine mammal is

sighted entering or within its respective Exclusion Zone(s). Any PSO on duty has the authority to call for a shutdown of the acoustic source if a marine mammal is detected within the applicable Exclusion Zones. Any disagreement between the PSO and vessel operator should be discussed only after shutdown has occurred. The vessel operator would establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.

The shutdown requirement is waived for small delphinids (belonging to the genera of the Family *Delphinidae*: *Delphinus*, *Lagenorhynchus*, *Stenella*, or *Tursiops*) and pinnipeds if they are visually detected within the applicable Exclusion Zones. If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the applicable Level B harassment zone, shutdown will occur. In the event of uncertainty regarding the identification of a marine mammal species (*i.e.*, such as whether

the observed marine mammal belongs to *Delphinus*, *Lagenorhynchus*, *Stenella*, or *Tursiops* for which shutdown is waived, PSOs must use their best professional judgement in making the decision to call for a shutdown.

Specifically, if a delphinid from the specified genera or a pinniped is visually detected approaching the vessel (*i.e.*, to bow ride) or towed equipment, shutdown is not required.

Upon implementation of a shutdown, the source may be reactivated after the marine mammal has been observed exiting the applicable Exclusion Zone or following a clearance period of 15 minutes for harbor porpoises and 30 minutes for all other species where there are no further detections of the marine mammal.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.*, parametric sub-bottom profilers) other than non-parametric sub-bottom profilers (*e.g.*, CHIRPs). Pre-clearance and ramp-up, but not shutdown, are required when using non-impulsive, non-parametric sub-bottom profilers.

Seasonal Operating Requirements

As described in the in the **Federal Register** notice announcing the final 2022 IHA (87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022), a section of the survey area partially overlaps with a portion of a North Atlantic right whale seasonal management area (SMA) off the port of New York/New Jersey. This SMA is active from November 1 through April 30 of each year. All survey vessels, regardless of length, would be required to adhere to vessel speed restrictions (<10 knots) when operating within the SMA during times when the SMA is active. In addition, between watch shifts, members of the monitoring team would consult NMFS' NARW reporting systems for the presence of NARWs throughout survey operations. Members of the monitoring team would also monitor the NMFS NARW reporting systems for the establishment of Dynamic Management Areas (DMA). NMFS may also establish voluntary right whale Slow Zones any time a right whale (or whales) is acoustically detected. Atlantic Shores should be aware of this possibility and remain attentive in the event a Slow Zone is established nearby or overlapping the survey area (Table 3).

TABLE 3—NORTH ATLANTIC RIGHT WHALE DYNAMIC MANAGEMENT AREA (DMA) AND SEASONAL MANAGEMENT AREA (SMA) RESTRICTIONS WITHIN THE SURVEY AREAS

Survey area	Species	DMA restrictions	Slow zones	SMA restrictions
Lease Area	North Atlantic right whale (<i>Eubalaena glacialis</i>).	If established by NMFS, all of Atlantic Shores' vessels will abide by the described restrictions.		N/A.
ECR North				November 1 through July 31 (Raritan Bay).
ECR South				N/A.

Note: More information on Ship Strike Reduction for the North Atlantic right whale can be found at NMFS' website: <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>.

There are no known marine mammal rookeries or mating or calving grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The survey activities would occur in an area that has been identified as a biologically important area for migration for NARWs. However, given the small spatial extent of the survey area relative to the substantially larger spatial extent of the right whale migratory area and the relatively low amount of noise generated by the survey, the survey is not expected to appreciably reduce the quality of migratory habitat nor to negatively impact the migration of NARWs, thus mitigation to address the survey's occurrence in NARW migratory habitat is not warranted.

Vessel Strike Avoidance

Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Survey vessel crewmembers responsible for navigation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures would include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Atlantic Shores will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down, stop their vessels, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of additional submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (species-specific distances detailed below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.*, PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammal from other phenomena, and (2)

broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammals. All vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of NARWs from vessel strikes, including seasonal management areas (SMAs) and dynamic management areas (DMAs) when in effect. See www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales for specific detail regarding these areas.

- All vessels must reduce their speed to 10-knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel;
- All vessels must maintain a minimum separation distance of 500 m (1,640 ft) from right whales and other ESA-listed species. If an ESA-listed species is sighted within the relevant separation distance, the vessel must steer a course away at 10-knots or less until the 500 m separation distance has been established. If a whale is observed but cannot be confirmed as a species that is not ESA-listed, the vessel operator must assume that it is an ESA-listed species and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m (328 ft) from non-ESA-listed baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m (164 ft) from all other marine mammals, with an understanding that, at times, this may not be possible (*e.g.*, for animals that approach the vessel, bow-riding species).
- When marine mammal are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.*, attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Members of the monitoring team will consult NMFS NARW reporting system and Whale Alert, daily and as able, for the presence of NARWs throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the survey area during the survey, the vessels will abide by speed restrictions in the DMA.

Training

All PSOs must have completed a PSO training program and received NMFS approval to act as a PSO for geophysical surveys. Documentation of NMFS approval and most recent training certificates of individual PSOs' successful completion of a commercial PSO training course must be provided upon request. Further information can be found at www.fisheries.noaa.gov/national/endangered-species-conservation/protected-species-observers.

Atlantic Shores shall instruct relevant vessel personnel with regard to the authority of the marine mammal monitoring team, and shall ensure that relevant vessel personnel and the marine mammal monitoring team participate in a joint onboard briefing (hereafter PSO briefing), led by the vessel operator and lead PSO, prior to beginning survey activities to ensure that responsibilities, communication procedures, marine mammal monitoring protocols, safety and operational procedures, and IHA requirements are clearly understood. This PSO briefing must be repeated when relevant new personnel (*e.g.*, PSOs, acoustic source operator) join the survey operations before their responsibilities and work commences.

Survey-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. All vessel crew members must be briefed in the identification of protected species that may occur in the survey area and in regulations and best practices for avoiding vessel collisions. Reference materials must be available aboard all survey vessels for identification of listed species. The expectation and process for reporting of protected species sighted during surveys must be clearly communicated and posted in highly visible locations aboard all survey vessels, so that there is an expectation for reporting to the designated vessel contact (such as the lookout or the vessel captain), as well as a communication channel and process for crew members to do so. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary

requirements throughout the survey activities.

Proposed Monitoring and Reporting

The proposed monitoring and reporting requirements are identical to those included in the **Federal Register** notice announcing the final 2022 IHA (87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022). The measures proposed for inclusion in this IHA are found below.

Monitoring Measures

Atlantic Shores must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammal and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

PSO names must be provided to NMFS by the operator for review and confirmation of their approval for specific roles prior to commencement of the survey. For prospective PSOs not previously approved, or for PSOs whose approval is not current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally-approved. One unconditionally-approved visual PSO shall be designated as the lead for the entire PSO team. This lead should typically be the

PSO with the most experience, would coordinate duty schedules and roles for the PSO team, and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; and (3) previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

PSOs must coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars or night-vision equipment and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Any observations of marine mammal by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Atlantic Shores must work with the selected third-party PSO provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification.

Such equipment, at a minimum, shall include:

- At least one thermal (infrared) imagine device suited for the marine environment;
- Reticule binoculars (e.g., 7 x 50) of appropriate quality (at least one per PSO, plus backups);
- Global Positioning Units (GPS) (at least one plus backups);
- Digital cameras with a telephoto lens that is at least 300 millimeter (mm) or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;
- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and
- Any other tools deemed necessary to adequately and effectively perform PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-party PSO provider, or the operator, but Atlantic Shores is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA.

During good conditions (e.g., daylight hours; Beaufort sea state 3 or less), PSOs shall conduct observations when the specified acoustic sources are not operating for comparison of sighting rates and behavior with and without use of the specified acoustic sources and between acquisition periods, to the maximum extent practicable.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including Exclusion Zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established Exclusion Zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

Atlantic Shores plans to utilize six PSOs across each vessel to account for shift changes, with a total of 18 during these surveys (six PSOs per vessel x three vessels). At a minimum, during all HRG survey operations (e.g., any day on which use of an HRG source is planned to occur), one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active

survey vessels during daylight hours (i.e., from 30 minutes prior to sunrise through 30 minutes following sunset) and two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to Exclusion Zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (e.g., daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements (see *Reporting Measures*). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (e.g., species, numbers, behavior); and details of any observed marine mammal behavior that occurs (e.g., noted behavioral disturbances).

Reporting Measures

Atlantic Shores shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes

sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammals sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced, time-stamped vessel tracklines for all time periods during which acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (e.g., when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize the information submitted in interim monthly reports (if required) as well as additional data collected. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Potlock@noaa.gov*.

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of marine mammal to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

1. Vessel names (source vessel and other vessels associated with survey), vessel size and type, maximum speed capability of vessel;
2. Dates of departures and returns to port with port name;
3. The lease number;
4. PSO names and affiliations;
5. Date and participants of PSO briefings;
6. Visual monitoring equipment used;

7. PSO location on vessel and height of observation location above water surface;

8. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;

9. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;

10. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval

11. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;

12. Water depth (if obtainable from data collection software);

13. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;

14. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (e.g., vessel traffic, equipment malfunctions); and

15. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (i.e., pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

Upon visual observation of any marine mammal, the following information must be recorded:

1. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

2. Vessel/survey activity at time of sighting (e.g., deploying, recovering, testing, shooting, data acquisition, other);

3. PSO who sighted the animal;

4. Time of sighting;

5. Initial detection method;

6. Sightings cue;

7. Vessel location at time of sighting (decimal degrees);

8. Direction of vessel's travel (compass direction);

9. Speed of the vessel(s) from which the observation was made;

10. Identification of the animal (e.g., genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;

11. Species reliability (an indicator of confidence in identification);

12. Estimated distance to the animal and method of estimating distance;

13. Estimated number of animals (high/low/best);

14. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);

15. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars, or markings, shape and size of dorsal fin, shape of head, and blow characteristics);

16. Detailed behavior observations (e.g., number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior before and after point of closest approach);

17. Mitigation actions; description of any actions implemented in response to the sighting (e.g., delays, shutdowns, ramp-up, speed or course alteration, etc.) and time and location of the action;

18. Equipment operating during sighting;

19. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and

20. Description of any actions implemented in response to the sighting (e.g., delays, shutdown, ramp-up) and time and location of the action.

If a NARW is observed at any time by PSOs or personnel on any survey vessels, during surveys or during vessel transit, Atlantic Shores must report the sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866-755-6622) within two hours of occurrence, when practicable, or no later than 24 hours after occurrence. NARW sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the WhaleAlert app (<http://www.whalealert.org>).

In the event that personnel involved in the survey activities discover an injured or dead marine mammal, Atlantic Shores must report the incident to NMFS as soon as feasible by phone (866-755-6622) and by email (nmfs.gar.stranding@noaa.gov and PR.ITP.MonitoringReports@noaa.gov) as soon as feasible. The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

2. Species identification (if known) or description of the animal(s) involved;

3. Condition of the animal(s) (including carcass condition if the animal is dead);

4. Observed behaviors of the animal(s), if alive;

5. If available, photographs or video footage of the animal(s); and
 6. General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Atlantic Shores must report the incident to NMFS by phone (866-755-6622) and by email (nmfs.gar.stranding@noaa.gov and PR.ITP.MonitoringReports@noaa.gov) as soon as feasible. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the incident;
2. Species identification (if known) or description of the animal(s) involved;
3. Vessel's speed during and leading up to the incident;
4. Vessel's course/heading and what operations were being conducted (if applicable);
5. Status of all sound sources in use;
6. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
7. Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
8. Estimated size and length of animal that was struck;
9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;
10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
11. Estimated fate of the animal (*e.g.*, dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
12. To the extent practicable, photographs or video footage of the animal(s).

Preliminary Determinations

When issuing the 2022 IHA (87 FR 24103, April 22, 2022), NMFS found Atlantic Shores' proposed HRG survey would have a negligible impact to species or stocks annual rates of recruitment and survival and the amount of taking would be small relative to the population size of such species or stocks (less than 6 percent). Atlantic Shores' proposed HRG survey activities are identical to those analyzed in support of the 2022 IHA. Additionally, the potential effects of the activity, taking into consideration the proposed mitigation and related monitoring measures, are identical to those evaluated in support of the 2022

IHA. There is a minor increase in estimated take numbers for six marine mammal species and/or stocks (see Table 2). However, the total amount of takes proposed for authorization are small relative to the best available population size of each species or stock (less than 1 percent for 13 stocks; less than 2 percent for 2 stocks; and less than 19 percent for the remaining stock (Western North Atlantic Migratory Coastal Stock of Bottlenose dolphins)). Additionally, only Level B harassment is proposed for authorization, which NMFS expects would be of a lower severity, predominately in the form of avoidance of the sound sources that may cause a temporary abandonment of the location during active source use that may result in a temporary interruption of foraging activities for some species. NMFS does not expect that the proposed activity will have long-term or permanent impacts as the acoustic source would be mobile and would leave the area within a specific amount of time for which the animals could return to the area. Even considering the increased estimated take for some species, the impacts of these lower severity exposures are not expected to accrue to a degree that the fitness of any individuals would be impacted, and therefore, no impacts on the annual rates of recruitment or survival are expected to result.

As previously discussed in the 2022 IHA (87 FR 24103, April 22, 2022), impacts from the survey are expected to be localized to the specific area of activity and only during periods of time where Atlantic Shores' acoustic sources are active. While areas of biological importance to fin whales, humpback whales, and harbor seals can be found off the coast of New Jersey and New York, NMFS does not expect these activities to affect these areas. This is due to the combination of the mitigation and monitoring measures being required of Atlantic Shores as well as the location of these biologically important areas. All of these important areas are found outside of the range of this survey area, as is the case with fin whales and humpback whales (BIAs found further north), and, therefore, not expected to be impacted by Atlantic Shores' survey activities. Three major haul-out sites exist for harbor seals within ECR North along New Jersey, including at Great Bay, Sand Hook, and Barnegat Inlet (CWFNJ, 2015). As hauled out seals would be out of the water, no in-water effects are expected.

Atlantic Shores' project would occur in a small fraction of the migratory corridor for the North Atlantic right whale and impacts are expected to be

limited to low levels of behavioral harassment, resulting in temporary and minor behavioral changes during any brief period of exposure. As noted for the 2022 IHA (87 FR 24103, April 22, 2022), the size of the survey area (5,868 km²) in comparison with the entire migratory habitat for the North Atlantic right whale (BIA of 269,448 km²) is small, representing 2.11 percent of the entire migratory corridor. Given the transitory nature of North Atlantic right whales in this area and due to the lack of year-round "core" North Atlantic right whale foraging habitat (Oleson *et al.*, 2020) (such habitat is located much further north in the southern area of Martha's Vineyard and Nantucket Islands where both visual and acoustic detections of North Atlantic right whales indicate a nearly year-round presence (Oleson *et al.*, 2020)), it is unlikely for any exposure to cause chronic effects as any exposure would be short and intermittent. Furthermore, given the small size of the Level B harassment zones (141 m) and the robust suite of mitigation and monitoring measures proposed by NMFS, with specific note on the mitigation zones for North Atlantic right whales (exclusion zone; 500 m), NMFS does not expect adverse impacts on this species. Lastly, NMFS notes the reduction in requested take from the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022) due to the revised Duke University density data (Roberts and Halpin, 2022). Under the 2022 IHA, NMFS authorized 17 instances of take for North Atlantic right whales. Here, NMFS is proposing only three takes by Level B harassment representing less than 1 percent of the overall species abundance. Given the updates to the density for this species in particular during the periods where project activities are expected to be ongoing, NMFS expects low-level impacts (*e.g.*, temporary avoidance of the area) from this proposed project on North Atlantic right whales.

We also note that our findings for other species with active UMEs or species where biologically important areas or haul-outs have been previously described in the 2022 IHA remain applicable to this project. In conclusion, there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a

negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Atlantic Shores' activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA, the North Atlantic right, fin, sei, and sperm whale, and has determined that this activity falls within the scope of activities analyzed in NMFS Greater Atlantic Regional Fisheries Office's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Atlantic Shores for conducting HRG marine site characterization surveys off New Jersey and New York for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the 2022 IHA (ITA application; issued IHA; and **Federal Register** notices including 87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022)), the proposed authorization, and any other aspect of this notice of proposed IHA for the

proposed HRG marine site characterization surveys. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of the Proposed Activity and Anticipated Impacts section of this notice is planned or (2) the activities as described in the Description of the Proposed Activity and Anticipated Impacts section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);

- The request for renewal must include the following:

- (1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

- (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: March 24, 2023.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2023-06594 Filed 3-29-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

The 46th Meeting of the U.S. Coral Reef Task Force

AGENCY: The Coral Reef Conservation Program, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of meeting; request for comments.

SUMMARY: NOAA and the Department of Interior (DOI) will hold the 46th meeting of the U.S. Coral Reef Task Force (USCRTF). NOAA and DOI will be accepting oral and written comments.

DATES: NOAA and DOI will hold a public meeting on Friday, April 21, 2023, from 8:30 a.m. to 5 p.m. Eastern Time (ET) at the Department of Interior, Auditorium, 1849 C St. NW, Washington, DC 20240. Written comments must be received before 8 a.m. ET on April 21, 2023.

ADDRESSES: Comments may be submitted by the following methods:

Oral Comments: NOAA and DOI will accept oral comments at the meeting on Friday, April 21, 2023, from 12:30 p.m. to 1 p.m. ET.

Email: Please direct written comments to Michael Lameier, NOAA, USCRTF Steering Committee Point of Contact, NOAA Coral Reef Conservation Program, via email at michael.lameier@noaa.gov. In the subject heading of your email, please include "Written comments for the 46th U.S. Coral Reef Task Force Meeting".

The oral and written comments NOAA and DOI receive 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 USCRTF or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT:

Michael Lameier, NOAA USCRTF Steering Committee Point of Contact, NOAA Coral Reef Conservation Program, (410) 267-5673, michael.lameier@noaa.gov, or Liza Johnson, DOI USCRTF Steering Committee Executive Secretary, U.S. Department of Interior, (202) 255-9843, Liza_M_Johnson@ios.doi.gov, or visit the USCRTF website at <http://www.coralreef.gov>.

SUPPLEMENTARY INFORMATION: The meeting provides a forum for coordinated planning and action among Federal agencies, State and territorial governments, and non-governmental partners. Registration is requested to participate in the meeting. This meeting has time allotted for public oral comment from 12:30 p.m. to 1 p.m. ET. A written summary of the meeting will be posted on the USCRTF website within two months of occurrence. For more information about the meeting, registering for the meeting, and submitting public comments, visit <http://www.coralreef.gov>. During the oral comment period, commenters are encouraged to address the meeting, the role of the USCRTF, or general coral reef conservation issues.

Authority: Pub. L. 117-263, 136 Stat 2396; E.O. 13089, 63 FR 32701.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023-06617 Filed 3-29-23; 8:45 am]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 230306-0064]

RIN 0660-XC056

National Environmental Policy Act Procedures and Categorical Exclusions

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The National Telecommunications and Information Administration (“NTIA”) proposes to follow First Responder Network Authority’s (“FirstNet Authority”) National Environmental Policy Act (“NEPA”) procedures on an interim basis with modifications to account for

NTIA’s internal organization and establish 33 categorical exclusions (“CEs”) in compliance with NEPA, the Council on Environmental Quality (“CEQ”) regulations, and other related authorities. NTIA’s proposed CEs cover administrative, real property and facility, and operational actions that individually or cumulatively do not have a significant effect on the human environment. This process is intended to further NTIA’s compliance with the Infrastructure Investment and Jobs Act (“IIJA”) and increase NTIA’s efficiency in environmental analysis and decision making while fully meeting NEPA’s requirements.

DATES: Submit comments on or before May 1, 2023.

ADDRESSES: You may submit comments, identified by [docket number and/or RIN number], by any of the following methods:

Federal Rulemaking Website: Go to <https://www.regulations.gov> and search for Docket ID NTIA-2023-0004.

Email comments to: NEPAComments@ntia.gov.

Mail comments to: National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4878, Attn: Amanda Pereira, Environmental Program Officer, Washington, DC 20230. Comments submitted by mail may be in hard copy (paper) or electronic (e.g., CD-ROM, disk, or thumb drive).

FOR FURTHER INFORMATION CONTACT:

Amanda Pereira, Environmental Program Officer, at the address listed in the **ADDRESSES** section of this notice by electronic or regular mail as listed above, or by telephone 202-834-4016.

SUPPLEMENTARY INFORMATION:

I. Background

NTIA is the Executive Branch agency that is principally responsible for advising the President on telecommunications and information policy issues. NTIA’s programs and policymaking focus largely on expanding broadband internet access and adoption in the United States, expanding the use of spectrum by all users, and ensuring that the internet remains an engine for continued innovation and economic growth. NTIA is engaged in a range of efforts to increase internet access and adoption.

NTIA’s Role in Implementing the Broadband Provisions of the 2021 Infrastructure Investment and Jobs Act

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (“IIJA”) into

law.¹ Passage of the IIJA is a significant step forward in achieving the Biden-Harris Administration’s goal of providing broadband access to the entire United States. The IIJA sets forth a \$65 billion investment into broadband; \$48.2 billion of that investment will be administered by NTIA. This investment will leverage NTIA’s experience in promoting broadband infrastructure development and digital inclusion efforts.

The IIJA directs NTIA to establish five new broadband programs and provides additional funding for the previously established Tribal Broadband Connectivity Program (“TBCP”). The largest of these programs is the Broadband Equity, Access, and Deployment (“BEAD”) Program, which Congress mandated NTIA establish in no more than 180 days after the IIJA was enacted.² The BEAD Program will provide \$42.45 billion, to be distributed among states, territories, DC, and Puerto Rico, for projects that support broadband infrastructure deployment and adoption. The IIJA requires that NTIA obligate all funds appropriated for the BEAD program in an expedient manner.³ One billion dollars will also be appropriated to NTIA for the creation of the Enabling Middle Mile Broadband Infrastructure Program. The purpose of this grant program is to expand and extend middle mile infrastructure to reduce the cost of connecting unserved and underserved areas to the internet backbone. An additional \$2.75 billion will be distributed through the Digital Equity Act Programs to promote digital inclusion and equity to ensure that all individuals and communities have the opportunity to acquire the same skills, technology, and capacity needed to engage in the Nation’s digital economy. These programs include the State Digital Equity Planning Grant Program, a \$60 million formula grant program for states and territories to develop digital equity plans; the State Digital Equity Capacity Grant Program, a \$1.44 billion formula grant program for states and territories to implement digital equity projects and support the implementation of digital equity plans; and the Digital Equity Competitive Grant Program, a \$1.25 billion discretionary grant program for specific types of political subdivisions to implement digital equity projects.

Additionally, the IIJA provides \$2 billion to NTIA’s existing TBCP. The TBCP directs funding to Tribal governments to be used for broadband

¹ Infrastructure Investment and Jobs Act, Public Law 117-58 (2021).

² *Id.* at 60102(b).

³ *Id.* at 60102(b)(3).

deployment on Tribal lands, as well as for telehealth, distance learning, broadband affordability, and digital inclusion.

To facilitate NTIA's compliance with the IJA and because of the critical need to expand and secure broadband access across the United States, NTIA must find opportunities to accelerate provision of its appropriated funding while ensuring it complies with all relevant authorities, including NEPA.

National Environmental Policy Act

NEPA requires Federal agencies to undertake an assessment of and consider in their decision making the environmental effects of their proposed actions and involve the public prior to making a final decision and implementing the action. NEPA applies to any Federal project, decision, or action, including grants, that may significantly affect the quality of the human environment.⁴ NEPA also established the Council on Environmental Quality ("CEQ"), which issued regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The CEQ regulations require Federal agencies to adopt, as necessary, their own implementing procedures to supplement CEQ's regulations, and to establish and use Categorical Exclusions ("CEs") to define categories of actions that normally do not individually or cumulatively have a significant effect on the human environment.⁵ These particular actions, therefore, normally do not require further NEPA review in the form of either an environmental assessment ("EA") or an environmental impact statement ("EIS").

A CE does not exempt an action from NEPA review; rather, it is one form of environmental review under NEPA. An agency may apply a CE to a proposed action after the agency has carefully reviewed and determined that the action fits within the category of actions encompassed by the CE. In making this determination, the decision maker must also consider whether extraordinary circumstances apply, which can indicate that a normally excluded action might have a significant environmental effect. Thus, a CE does not eliminate environmental review of a proposed action but reduces paperwork and delay and allows an agency to efficiently focus its resources on proposed actions with

the potential for significant environmental effects.

Presently, CEQ is undertaking a multiphase rulemaking process to review and revise the NEPA implementing regulations.⁶ CEQ has provided agencies additional time to propose updates to their NEPA procedures to be consistent with the CEQ regulations.⁷ Therefore, NTIA is proposing to establish new CEs and otherwise follow the existing implementing procedures of the FirstNet Authority, an independent authority within NTIA, in the interim while CEQ completes its rulemaking processes. Following the FirstNet Authority's procedures will facilitate the IJA's large-scale investment in NTIA programs and the need for NTIA to fulfill the mandates of the IJA in a timely manner, by ensuring NTIA make the most efficient use of time and available funding and resources to fulfill its environmental analysis and decision-making responsibilities.

Following CEQ's revisions to the NEPA regulations, NTIA intends to propose comprehensive NEPA procedures. In the interim, in this notice, NTIA proposes two additions to the FirstNet Authority procedures. First, it explains how NTIA would interpret provisions specific to the FirstNet Authority in the NTIA context. Second, NTIA proposes to establish CEs specific to NTIA's action; NTIA would not apply the FirstNet Authority CEs.

NTIA's Relationship to the FirstNet Authority

The FirstNet Authority is an independent authority within NTIA.⁸ The FirstNet Authority's statutory mission is to take all actions necessary to ensure the establishment and operation of a nationwide public safety broadband network. On April 29, 2014, the FirstNet Authority finalized its NEPA implementing procedures.⁹ These procedures provide the framework for the FirstNet Authority's establishment of a NEPA compliance program and application of the appropriate level of NEPA review for major Federal actions related to the deployment of a nationwide public safety broadband network. More specifically, FirstNet Authority's NEPA implementing procedures supplement CEQ regulations and provide guidance to FirstNet Authority employees and potential applicants regarding procedural

requirements for the application of NEPA. In 2018, the FirstNet Authority modified its NEPA implementing procedures, CEs, and related extraordinary circumstances to ensure that they aligned with the FirstNet Authority's statutory mission, activities, and experience, and better assisted the FirstNet Authority in complying with NEPA and the Federal Communications Commission's regulations. The FirstNet Authority published its final, revised procedures on February 1, 2018.¹⁰ FirstNet Authority's NEPA implementing procedures are available at: <https://firstnet.gov/newsroom/resources/federal-register-notices/notice-revised-national-environmental-policy-act>.

Relevance of FirstNet Authority Implementing Procedures to NTIA Actions

As a newly created entity, the FirstNet Authority did not have any existing CEs, yet it was responsible for, at a minimum, ensuring nationwide standards for the use of and access to the network; issuing open, transparent, and competitive requests for proposals ("RFPs") to build, operate, and maintain the network; encouraging these RFPs to leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network; and overseeing contracts with non-Federal entities to build, operate, and maintain the network.

The FirstNet Authority, similar to NTIA's grant programs, is mandated to plan and construct telecommunication and broadband infrastructure across the United States and its territories. The specific activities anticipated to be funded by NTIA are comparable to the FirstNet Authority project implementation activities. The origins of FirstNet's CEs and implementing procedures are based upon NTIA's prior broadband projects. Therefore, by utilizing this experience and existing CEs and implementing procedures NTIA is building what has come before at both NTIA and FirstNet.

Much of NTIA's environmental activities over the last three decades have been through the administration of broadband grants through the Public Safety Interoperable Communications ("PSIC"), Broadband Technology Opportunities Program ("BTOP"), and current grant programs. Due to the similarity in project activities and

⁴ See 42 U.S.C. 4332(2)(C).

⁵ 40 CFR 1508.1(d), 1507.3; CEQ, Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act, 75 FR 75628 (Dec. 6, 2010).

⁶ 86 FR 55759 (Oct. 7, 2021).

⁷ 86 FR 34154 (June 29, 2021).

⁸ 47 U.S.C. 1401.

⁹ FirstNet, National Environmental Policy Act Implementing Procedures and Categorical Exclusions, 79 FR 23945 (Apr. 29, 2014).

¹⁰ FirstNet, First Responder Network Authority; Revised National Environmental Policy Act Procedures and Categorical Exclusions, 83 FR 4632 (February 1, 2018).

scope, the FirstNet Authority established its CEs based primarily on the then existing CEs that were approved and applied by NTIA in the implementation of the BTOP. Each BTOP CE was reviewed and deliberated in concept, coverage, applicability, and wording and supported by an administrative record for each of the CEs to ensure they fulfilled the goal of balancing increased administrative efficiency in NEPA compliance with avoidance of misinterpretations and misapplications of exclusionary language that could lead to non-compliance with NEPA requirements. The FirstNet Authority determined, and CEQ concurred, that all of the BTOP CEs met both objectives. The BTOP CEs were comparable to the FirstNet Authority's actions because they (1) related to planning, deployment, and construction of broadband infrastructure; (2) utilized the same methods and equipment of installing broadband infrastructure; (3) were not restricted to an environmental setting or geographic region of the country; and (4) were subject to review for extraordinary circumstances.

Most importantly, the specific activities anticipated to be funded by NTIA are comparable to the FirstNet Authority project implementation activities as they will primarily include the installation of fiber optic cables, cell towers, antenna collocations, buildings, and power units. The FirstNet Authority is also required to leverage, to the maximum extent economically desirable, existing commercial infrastructure in its deployment and operation of its network. The geographic scope of the FirstNet network, like NTIA's grant programs, encompasses all U.S. states and territories. Thus, the actions funded by NTIA's grant programs will likely occur in a wide range of environmental settings, like FirstNet Authority actions, and will be consistent with the environmental review process for analyzing proposed actions and making NEPA determinations based on the specific location and type of proposed project activities, of which the CEs would be an integral part. Accordingly, because the characteristics of the actions in deploying and operating a nationwide network are comparable in intensity, scope, and geography to NTIA's programs, and based on the outcomes of the FirstNet Authority applying these procedures to its network, NTIA has determined that the FirstNet Authority's NEPA implementing procedures including their CEs are relevant to NTIA actions and have been helpful to NTIA

as it develops its own implementing procedures and CEs.

Use of FirstNet Authority's Implementing Procedures

As discussed elsewhere, the missions, geographic scopes, environmental settings, characteristics and technologies of proposed projects, and, more importantly, outcomes for the application of the FirstNet Authority implementing procedures are expected to be similar when used for the NTIA's expected programmatic activities and grant programs. Ultimately, the proposed adoption of these procedures is designed to assist decision makers within the bureau that fund, assist, plan, and construct telecommunication and broadband infrastructure across the United States and its territories.

The FirstNet Authority procedures incorporate CEQ's NEPA implementing regulations at 40 CFR part 1500–1508 as well as guidance on various environmental resource areas issued by CEQ. With the exception of its *Roles and Responsibilities* section, which will be covered through internal NTIA-specific guidance, NTIA expects to implement the existing procedures consistent with how they are written and currently executed by the FirstNet Authority. Since the FirstNet Authority drafted these procedures for consistency with and to minimize repetition of CEQ regulations, the procedures would endure changes to the CEQ regulations and function alongside any internal NTIA-specific guidance. For instance, terminology used throughout the procedures are consistent with that found in CEQ regulations (40 CFR 1508.1), general discussion of environmental review and document development processes are consistent with 40 CFR 1501–1502 and guidance,¹¹ public involvement procedures are consistent with 40 CFR 1503 and guidance, and the list of authorities is consistent with those followed by NTIA. Lastly, since part of this process was to develop NTIA-specific categorical exclusions to be used for its programs, NTIA does not expect to use or adopt the categorical exclusions developed by the FirstNet Authority and presented in the procedures. NTIA feels that those being proposed herein are specific enough and would be more than adequate to execute NTIA's mission and NEPA activities. While FirstNet's CEs are relevant and were helpful in this

development, NTIA determined to implement its own specific CEs to more specifically address its own needs and programs.

Development of Categorical Exclusions

NTIA has developed these proposed CEs consistent with the CEQ Regulations at 40 CFR 1501.4 and 1507.3, as well as CEQ's 2010 guidance memorandum on establishing, applying, and revising CEs. In accordance with CEQ's 2010 memorandum, NTIA reviewed and analyzed past actions, including their supporting NEPA documentation, to develop initial proposals of potential CEs. NTIA also identified CEs of numerous other Federal agencies that are sufficiently descriptive to demonstrate to NTIA that the activities that fall within these CEs are similar in nature, scope, and impact on the human environment to those performed by NTIA. Thus, NTIA proposes to substantiate its CEs by relying on previously implemented actions and benchmarking other agencies' CEs, both of which are methods recommended by CEQ to substantiate new or revised CEs.¹² Benchmarking means that NTIA is substantiating its proposed CE based on other agencies' experience with a comparable CE and the administrative record developed by other agencies when they established those comparable CEs. To ensure the CEs that NTIA proposes to benchmark properly support NTIA's proposed CEs, NTIA analyzed the actions encompassed by the other agencies' CEs by considering the characteristics of the actions, methods of implementing the actions, frequency of the actions, applicable standard operating procedures or implementing guidance, and timing and context. NTIA used this information to determine that the actions analyzed by these agencies are sufficiently similar to those covered by the proposed CE to support NTIA's conclusion that the actions covered by NTIA's proposed CEs will not result in individually or cumulatively significant impacts on the human environment under normal circumstances. NTIA also relied on its own experience with previously implemented actions (e.g., EAs that resulted in findings of no significant impact) to determine that the analyses of those actions and the resulting absence of environmental effects of those actions support the proposed CE. NTIA is establishing these CEs as a means to reduce delay and fulfill its mandates under the IJA, consistent

¹¹ Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (CEQ, 1986); Guidance Regarding NEPA Regulations (CEQ, 1983); and Establishing, Applying, and Revising Categorical Exclusions under NEPA (CEQ, 2010).

¹² 75 FR 75628.

with NEPA, the CEQ Regulations, and other related authorities.

When applying CEs, NTIA will do so consistently with CEQ's 2010 memorandum. When determining whether to use a CE for a proposed action, NTIA will carefully review the description of the proposed action to ensure that it fits within the category of actions described in the CE. Next, NTIA will consider the specific circumstances associated with the proposed action, to rule out any extraordinary circumstances that might give rise to significant environmental effects requiring further analysis and documentation in an EA or an EIS. The consideration of extraordinary circumstances may include professional judgement for administrative or non-technical proposals or those that do not include ground disturbance to environmental due diligence reports and consultations or other environmental documentation for proposals that are more involved or include ground disturbance. In other words, when evaluating whether to apply a CE to a proposed action, NTIA will consider the specific circumstances associated with the proposed action and will not end its review based solely on the determination that the proposed action fits within the description of the CE; rather, NTIA will also consider whether there are extraordinary circumstances that would warrant further NEPA review. Generally, NTIA would use a Memorandum for Record to document project-level CE decisions and a Memorandum to File to document programmatic CE decisions; furthermore, NTIA would use discretion when determining whether to document those CEs with the lowest potential for environmental impact and extraordinary circumstances, such as Proposed Categorical Exclusion A-1.

NTIA's proposed CEs are organized into three series, based on the types of activities encompassed by each group. Series A encompasses proposed CEs that pertain to administrative actions. Series B encompasses proposed CEs related to real property or facility actions. Series C sets forth proposed CEs that pertain to operational actions. NTIA has developed an administrative record supporting the establishment of these CEs, which provides a description of and analysis for each proposed CE. NTIA invites comments on the CEs and analysis contained in the administrative record, which is available at:

Publications | National Telecommunications and Information Administration (ntia.gov).

II. Regulatory Notices

Paperwork Reduction Act

This notice does not contain collection-of-information requirements subject to the Paperwork Reduction Act ("PRA") of 1995 (44 U.S.C. 3501). Notwithstanding any other provisions of law, no person is required to, nor shall a person be subject to penalty for failure to comply with, a collection of information subject to the requirements of PRA unless that collection of information displays a currently valid Office of Management and Budget ("OMB") control number.

Environmental Impact

Implementing FirstNet Authority's existing NEPA implementing procedures and these CEs are intended to supplement CEQ regulations. CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of their responsibilities under NEPA. The requirements for establishing NEPA procedures are set forth at 40 CFR 1507.3.

III. Proposed Categorical Exclusions and Extraordinary Circumstances

Categorical Exclusions

Administrative Actions

A-1 Personnel, fiscal, management, and administrative activities, including recruiting, processing, paying, recordkeeping, budgeting, personnel actions, contract administration, and travel.

A-2 Preparation, modification, and issuance of policy directives, rules, regulations, procedures, guidelines, guidance documents, bulletins, and informational publications that are of an administrative, financial, legal, technical, or procedural nature, for which the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be, in whole or part, subject later to the NEPA process, either collectively or on a case-by-case basis.

A-3 Studies and engineering undertaken to define proposed actions or alternatives sufficiently so that environmental effects can be assessed.

A-4 Planning, educational, informational, or advisory activities provided to other agencies, public and private entities, visitors, individuals, or the public, including training exercises and simulations conducted under appropriately controlled conditions and

in accordance with all applicable laws, regulations, and requirements.

A-5 Software development, data analysis, or testing that does not involve ground disturbing activities.

A-6 Preparation and dissemination of scientific results, studies, surveys, audits, reports, plans, papers, recommendations, and technical advice.

A-7 Technical assistance to other Federal, Tribal, State, and local agencies or the public.

A-8 Routine procurement, use, storage, transportation, and disposal of non-hazardous goods and services in support of administrative, operational, or maintenance activities in accordance with Executive Orders and Federal procurement guidelines. Examples include office supplies and furniture; equipment; mobile assets (*i.e.*, vehicles, vessels, aircraft); utility services; and deployable emergency response supplies and equipment.

A-9 Purchase of deployable mobile and portable telecommunications equipment (*e.g.*, radios, Cell on Wheels, Cell on Light Truck, System on Wheels) that will be housed in existing facilities when not deployed.

A-10 Routine use of hazardous materials (including procurement, transportation, distribution, and storage of such materials) and reuse, recycling, and disposal of solid, medical, radiological, or hazardous waste in a manner that is consistent with all applicable laws, regulations, and requirements. Examples include use of chemicals for laboratory applications; refueling of storage tanks; temporary storage and disposal of solid waste; disposal of waste through manufacturer return and recycling programs; and hazardous waste minimization activities, including source reduction activities and recycling.

A-11 Reductions, realignments, or relocation of personnel, equipment, or mobile assets that do not result in changing the use of NTIA facilities or space in such a way that could cause a change to existing environmental effects or exceed the infrastructure capacity outside of NTIA-managed property. An example of exceeding the infrastructure capacity would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.

A-12 Federal assistance, grants, and external funding for activities that do not concern environmental matters or where the environmental effects are negligible. Examples of relevant activities could include, but are not limited to, planning, studies, or programs such as the Digital TV transition, which provided rebates to

consumers to subsidize the purchase of digital antennas, that have no potential to impact the environment. If an analysis determined that such activities had the potential to impact the environment, the CE could not be applied.

A-13 Contracts, collaborative research agreements, cooperative research and development agreements, interagency agreements, and other agreements that do not concern environmental matters or where the environmental effects are negligible.

Real Property/Facility Actions

B-1 Maintenance of facilities, equipment, and grounds. Examples include interior utility work, road maintenance, window washing, lawn mowing, landscaping, weed management/maintenance, trash collecting, facility cleaning, and snow removal.

B-2 Internal modifications, renovations, or additions (e.g., computer facilities, relocating interior walls) to structures or buildings that do not result in a change in the functional use of the property.

B-3 Exterior renovation, addition, repair, alteration, and demolition projects affecting buildings, roads, grounds, equipment, and other facilities, including subsequent disposal of debris, which may be contaminated with hazardous materials, lead, or asbestos. Hazardous materials must be disposed of at approved sites in accordance with all applicable laws, regulations, and requirements. Examples include the following:

- (i) Painting, roofing, siding, or alterations to an existing building;
- (ii) Adding a small storage shed to an existing building;
- (iii) Retrofitting for energy conservation, including weatherization, installation of timers on hot water heaters, installation of energy efficient lighting, and installation of low-flow plumbing fixtures; or
- (iv) Closing and demolishing a building not eligible for listing under the National Register for Historic Places.

B-4 Abatement of hazardous materials from existing facilities, including asbestos and lead based paint, conducted in compliance with all applicable laws, regulations, and requirements established for the protection of human health and the environment. Examples include containment, removal, and disposal of lead-based paint or asbestos tiles and asbestos-containing materials from existing facilities, remediation of hazardous materials in accordance with all applicable laws, regulations, and

requirements as part of facility and space management activities.

B-5 Acquisition, installation, operation, and removal of communications systems (including fiber optic cable), data processing equipment, and similar electronic equipment in or from existing facilities. Examples include purchasing, installing, decommissioning, and removing routers, repeaters, switches, cable, computers equipment, office equipment, and other related equipment in existing facilities.

B-6 Proposed new activities and operations conducted in an existing structure that would be consistent with previously established safety levels and would not result in a change in use of the facility. Examples include new types of research, development, testing, and evaluation activities, and laboratory operations conducted within existing enclosed facilities designed to support research and development activities.

B-7 Acquisition or use of space within existing facilities or portion thereof by purchase, lease, or use agreement where use or operation will remain unchanged. Examples include acquiring office space through lease, purchase, or use agreement, and acquisition of laboratory space through lease, purchase, or use agreement.

B-8 Transfer of administrative control over real property, including related personal property, between another Federal agency and NTIA that does not result in a change in the functional use of the property. Examples include transfer of facilities for use by NTIA, transfers of computer equipment, office equipment, and personal property, including laptops and cell phones.

B-9 Decisions and actions to close facilities, decommission equipment, or temporarily discontinue use of facilities or equipment, where the facility or equipment, including office equipment, telecommunications equipment, and computer equipment, is not used to prevent or control environmental impacts.

B-10 The determination and disposal of real property, such as excess office space, or personal property, including laptops and cell phones, that is excess to the needs of NTIA, when the real property or personal property is excessed in conformity with applicable General Services Administration procedures or is statutorily authorized to be excessed.

Operational Actions

C-1 Research activities conducted in laboratories and facilities where research practices and safeguards

prevent environmental impacts.

Examples include types of research, development, testing, and evaluation activities, and laboratory operations conducted within existing enclosed facilities designed to support research and development activities.

C-2 Outdoor research activities conducted in compliance with all applicable laws, regulations, and requirements. Examples include types of research, development, testing, and evaluation activities conducted outdoors where no new ground disturbance occurs and no sensitive resources (e.g., threatened or endangered species, archaeological sites, Tribal resources, wetlands, and waterbodies) are present, such as radar testing, radio noise measurements, and public safety communications research.

C-3 Periodic flight activities for training and research and development, that are routine and comply with all applicable laws, Federal Aviation Administration regulations, and other requirements.

C-4 New construction or improvement of operations or support facilities, switching stations, maintenance facilities, and other non-tower structures on previously disturbed ground, with no more than 1 acre (0.4 hectare) of ground disturbance, where the proposed facility use is generally compatible with the surrounding land use and applicable zoning standards, and will not require additional support infrastructure.

C-5 Installing, operating, maintaining, retrofitting, upgrading, repairing, removing, and/or replacement of existing microwave or radio communication towers, instruments, structures, or buildings that do not require ground disturbance outside of the original footprint, including installing or collocating equipment such as antennas, microwave dishes, or power units. For communication towers at or below 199 feet, renovations and equipment additions must not cause the total height of the tower to exceed 199 feet. Existing structures must not be eligible for listing under the National Register of Historic Places.

C-6 New construction or improvement of temporary buildings or experimental equipment (e.g., trailers, prefabricated buildings, and test slabs) on previously disturbed ground, with no more than 1 acre (0.4 hectare) of ground disturbance, where the proposed facility use is generally compatible with the surrounding land use and applicable zoning standards and will not require additional support infrastructure.

C-7 New construction of self-supporting (e.g., monopole or lattice)

wireless communication towers at or below 199 feet with no guy wires that require less than 1 acre (0.4 hectare) of ground disturbance, and where another Federal agency would not require an EA or EIS for its acquisition, installation, operations, or maintenance.

C-8 Changes to existing transmission lines or aerial fiber optic cable that involve less than 20 percent pole replacement, only where either the same or substantially equivalent support structures at the approximate existing support structure locations are used. Changes to existing transmission lines that require 20 percent or greater pole replacement will be considered the same as new construction.

C-9 Acquisition, installation, reconstruction, repair by replacement, and operation of utility (e.g., water, sewer, electrical), communication (e.g., fiber optic cable, data processing cable and similar electronic equipment), and security systems that use existing rights-of-way, easements, grants of license, distribution systems, facilities, or similar arrangements.

Extraordinary Circumstances

Extraordinary Circumstances that may preclude the use of a CE include:

1. Reasonable likelihood that the proposed action occurs within an environmentally sensitive or unique¹³ geographic area of notable recreational, ecological, scientific, cultural, scenic, or aesthetic importance.

2. Reasonable likelihood that the proposed action impacts species listed or proposed to be listed as Endangered or Threatened Species or have adverse effects on designated Critical Habitat for these species.

3. Reasonable likelihood that the proposed action impacts migratory birds or their habitats.

4. Reasonable likelihood that the proposed action adversely affects historic, archeological, or cultural sites, including Native American Traditional Cultural Properties, properties listed or

eligible for listing on the National Register of Historic Places, or land identified by archeologists as having high potential to contain archeological resources.

5. Reasonable likelihood that the proposed action restricts access to and ceremonial use of Indian sacred sites by Indian practitioners or adversely affect the physical integrity of such religious sacred sites.

6. Reasonable likelihood that the proposed action adversely impacts waterbodies, wetlands, floodplains, water quality, sole source aquifers, public water supply systems, or state, local, or tribal water quality standards established under the Clean Water Act or the Safe Drinking Water Act.

7. Reasonable likelihood that the proposed action has a disproportionately high and adverse effect on low-income populations or minority populations.

8. Reasonable likelihood that the proposed action involves construction on or near an active, inactive, or abandoned contaminated or hazardous waste site, or involve generation, transportation, treatment, storage, or disposal of substances hazardous to human health or the environment.

9. Reasonable likelihood that the proposed action involves the generation of ionizing or non-ionizing radiation or use of any radiation in excess of the Federal Communications Commission's established Maximum Permissible Exposure limits for human exposure to Radiofrequency Electromagnetic Energy fields.

10. Reasonable likelihood that the proposed action is controversial because of the introduction or employment of unproven technology, highly scientifically uncertain or unique environmental effects, substantial disagreement over the possible size, nature, or effect on the environment, or likelihood of degrading already existing poor environmental conditions.

11. Reasonable likelihood that the proposed action violates a Federal, Tribal, state, or local law, regulation, policy, or requirement imposed for the protection of the environment.

12. Reasonable likelihood that the proposed action is of a greater size or scope than is normal for an action of its type.

13. Reasonable likelihood that the proposed action has any other impacts

on human health or the environment that have not been otherwise addressed.

Stephanie Weiner,

Acting Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2023-06575 Filed 3-29-23; 8:45 am]

BILLING CODE 3510-60-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for: Current Population Survey Civic Engagement and Volunteering Supplement

AGENCY: The Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 30, 2023.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* AmeriCorps, Attention Andrea Robles, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through www.regulations.gov.

Comments submitted in response to this notice may be made available to the public through regulations.gov. 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 comment that

¹³ "Environmentally sensitive or unique" resources and areas may include, but are not limited to: all federal lands; areas having special designation or recognition such as prime or unique or agricultural lands; designated wilderness or wilderness study areas; wild and scenic rivers; 100-year or 500-year floodplains; coastal zones; wetlands; sole source aquifers (potential sources of drinking water); National Wildlife Refuges; National Parks; areas containing proposed or federally listed threatened or endangered species, or their designated critical habitat (including species and habitat listed under the Endangered Species Act of 1973 (16 U.S.C. part 1531 *et seq.*); Migratory Bird Treaty Act of 1918 (16 U.S.C. part 703 *et seq.*) and Bald and Golden Eagle Act of 1940, (16 U.S.C. part 668 *et seq.*); areas of critical environmental concern; or other areas of high environmental sensitivity.

may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Andrea Robles, Ph.D., 202–510–6292, or by email at arobles@cns.gov.

SUPPLEMENTARY INFORMATION:

Title of Collection: Current Population Survey Civic Engagement and Volunteering Supplement.

OMB Control Number: 3045–0139.

Type of Review: Renewal.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 60,000.

Total Estimated Number of Annual Burden Hours: 6,670.

Abstract: AmeriCorps is mandated by the Serve America Act of 2009 to produce an annual Civic Health Assessment in partnership with the National Conference on Citizenship. Volunteering and Civic Life reports, tables and data are made public on the AmeriCorps VCLA website and specialized tables are made available upon request.

The proposed survey will be the only source of nationally representative data on the number of Americans who are active in their communities through volunteering, social interactions, and civic behaviors. These measures include formal volunteering in an organization; a person's interactions with family, friends and neighbors; participation in community events; informal interactions; communication with one another on issues of public concern; and interactions with public and private institutions.

AmeriCorps has partnered with the US Census and the Bureau of Labor Statistics to collect data and produced annual volunteering reports since 2002. Currently, AmeriCorps is soliciting comments concerning its proposed renewal of the Current Population Survey Volunteering and Civic Engagement Supplement. AmeriCorps is directed by Congress to collect data and produce reports on the Nation's civic health and volunteering activity (Authority: 42 U.S.C. 12639(a); 13 U.S.C. 8(b); 29 U.S.C. 1). AmeriCorps also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on 11/20/2023.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is

necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on [regulations.gov](https://www.regulations.gov).

Mary Hyde,

Director, Office of Research and Evaluation.

[FR Doc. 2023–06588 Filed 3–29–23; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0013; OMB Control Number 0704–0477]

Information Collection Requirement; Organizational Conflicts of Interest in Major Defense Acquisition Programs

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites

comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704–0477 through July 31, 2023. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by May 30, 2023.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0477, using any of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

○ *Email:* osd.dfars@mail.mil. Include OMB Control Number 0704–0477 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, at 703–717–3446.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Organizational Conflicts of Interest in Major Defense Acquisition Programs; OMB Control Number 0704–0477.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 20.

Responses per Respondent: 3.

Annual Responses: 60.

Average Burden per Response: 40 hours.

Annual Burden Hours: 2,400.

Needs and Uses: The information collection under OMB Control Number 0704–0477 pertains to organizational conflicts of interest in major defense acquisition programs (MDAPs). This collection implements section 207 of the Weapon Systems Acquisition Reform Act of 2009, which requires DoD to tighten requirements for organizational conflicts of interest by contractors in major defense programs. This statutory requirement is implemented in the

solicitation provision at DFARS 252.209–7008, Notice of Prohibition Relating to Organizational Conflict of Interest—Major Defense Acquisition Program, which requires offerors to submit a mitigation plan when there is an organizational conflict of interest that can be resolved through mitigation.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–06533 Filed 3–29–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0009; OMB Control Number 0704–0359]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement, Contract Financing

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704–0359 through July 31, 2023. DoD proposes that OMB approve an extension of the information collection, to expire three years after the approval date.

DATES: DoD will consider all comments received by May 30, 2023.

ADDRESSES: You may submit comments, identified by OMB Control Number

0704–0359, using any of the following methods:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

○ *Email:* osd.dfars@mail.mil. Include OMB Control Number 0704–0359 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. David Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing and Related Clauses at 252.232; OMB Control Number 0704–0359.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondents' Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 1,000.

Responses per Respondent: 14.

Annual Responses: 14,000.

Average Burden per Response: 1.2 hours.

Annual Burden Hours: 16,800.

Needs and Uses:

- *DFARS 252.232–7007, Limitation of Government's Obligation.* The data submitted by contractors enables contracting officers to calculate improved financing opportunities that will provide benefit to both industry (prime contractor and subcontractor level) and the taxpayer. DFARS 252.232–7007 is prescribed for use in solicitations and resultant incrementally-funded fixed-price contracts. Paragraph (c) of the clause requires a written notification from the contractor that: (1) states the estimated date when the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable items; (2) states an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds, or to a mutually agreed upon substitute date; and (3) advises the contracting officer of the estimated amount of additional funds that will be required for the timely performance of the items funded pursuant to the clause, for a subsequent period as may be specified in the allotment schedule, or otherwise agreed to by the parties to the contract.

- *DFARS subpart 232.10, Performance-Based Payments, 252.232–*

7012, Performance Based Payments—Whole Contract Basis, and 252.232–7013, Performance Based Payments—Deliverable-Item Basis. Contracting officers use the information provided by contractors to create a cash-flow model for use in evaluating alternative financing arrangements. The analysis tool calculates improved financing opportunities that will provide benefit to both industry (prime contractor and subcontractor level) and the taxpayer. DFARS subpart 232.10 requires the contracting officer, when considering performance-based payments, to obtain from the contractor a proposed performance-based payments schedule which includes all performance-based payments events, completion criteria and event values along with the expected expenditure profile.

DFARS 252.232–7012 requires contractors to report the negotiated value of all previously completed performance-based payments; negotiated value of current performance-based payment(s) event(s); cumulative negotiated value of performance-based payment(s) events completed to date; total costs incurred to date; cumulative amount of payments previously requested; and the payment amount requested for the current performance-based payment.

DFARS 252.232–7013 requires contractors to report the negotiated value of current performance-based payment(s) event(s); cumulative negotiated value of performance-based payment(s) events completed to date; total costs incurred to date; cumulative amount of payments previously requested; and the payment amount requested for the current performance-based payment.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–06531 Filed 3–29–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0008; OMB Control Number 0704–0286]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Publicizing Contract Actions

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed revision and extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through July 31, 2023. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by May 30, 2023.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0286, using any of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

○ *Email:* osd.dfars@mail.mil. Include OMB Control Number 0704–0286 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Ziegler, 703–901–3176.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Part 205, Publicizing Contract Actions, and DFARS 252–205–7000, Provision of Information to Cooperative Agreement Holders; OMB Control Number 0704–0286.

Type of Request: Revision and extension.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 5,768.

Responses per Respondent: 1.

Annual Responses: 5,768.

Average Burden per Response: 1.08 hours, approximately.

Annual Burden Hours: 6,230.

Needs and Uses: DFARS 205.470 prescribes the use of the clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts, including solicitations and contracts using Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial products and commercial services, which are expected to exceed \$1.5 million. This clause implements 10 U.S.C. 4957 by requiring contractors to provide cooperative agreement holders, upon request, with a list of the contractor's employees or offices responsible for entering into subcontracts under DoD contracts. The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year. Upon receipt of a contractor's list, the cooperative agreement holder utilizes the information to identify and pursue contracting opportunities with DoD and expand the number of businesses capable of participating in Government contracts.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–06530 Filed 3–29–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0011; OMB Control Number 0704–0232]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement, Contract Pricing

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the

information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use under Control Number 0704–0232 through July 31, 2023. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by May 30, 2023.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0232, using any of the following methods:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

○ *Email:* osd.dfars@mail.mil. Include OMB Control Number 0704–0232 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. David Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 215.4, Contract Pricing, and related clause at DFARS 252.215; OMB Control Number 0704–0232.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 427.

Responses per Respondent: 1 (approximately).

Annual Responses: 427.

Average Burden per Response: 40.7 (approximately).

Annual Burden Hours: 17,400.

Needs and Uses: The clause at DFARS 252.215–7002, Cost Estimating System Requirements, requires that certain large business contractors—

- Establish an acceptable cost estimating system and disclose the estimating system to the administrative contracting officer in writing;

- Maintain the estimating system and disclose significant changes in the system to the administrative contracting officer on a timely basis; and

- Respond in writing to written reports from the Government that identify deficiencies in the estimating system.

DoD contracting officers use this information to determine if the contractor has an adequate system for generating cost estimates, which forecasts costs based on appropriate source information available at the time, and has the ability to monitor the correction of significant deficiencies. The need for information collection decreases as contractor estimating systems improve and gain contracting officer approval.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023-06526 Filed 3-29-23; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS-2023-0010; OMB Control Number 0704-0253]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Subcontracting Policies and Procedures

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use under Control Number 0704-0253 through July 31, 2023. DoD proposes that OMB

approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by May 30, 2023.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704-0253, using any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* osd.dfars@mail.mil. Include OMB Control Number 0704-0253 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. David Johnson, telephone 202-913-5764.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Subcontracting Policies and Procedures—DoD FAR Supplement Part 244; OMB Control Number 0704-0253.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 22.

Responses per Respondent: 2.

Annual Responses: 44.

Average Burden per Response: 8 hours.

Annual Burden Hours: 372.

Needs and Uses: Administrative contracting officers use this information in making decisions to approve or disapprove a contractor's purchase system. The disapproval of a contractor's purchasing system would necessitate Government consent to individual subcontracts and possibly prompt a financial withhold or other Government rights and remedies. DFARS 244.305, Granting, Withholding, or Withdrawing Approval, provides policy guidance for administrative contracting officers to determine the acceptability of the contractor's purchasing system and approve or disapprove the system, at the completion of the in-plant portion of a contractor purchasing system review, and to pursue correction of any deficiencies with the contractor. DFARS clause 252.244-7001, Contractor Purchasing System Administration, requires the contractor to respond within 30 days to a written initial determination from the contracting officer that identifies significant deficiencies in the contractor's purchasing system. The contracting officer will evaluate the contractor's

response to this initial determination and notify the contractor in writing of any remaining significant deficiencies, the adequacy of any proposed or completed corrective action, and system disapproval if the contracting officer determines that one or more significant deficiencies remain. If the contractor receives the contracting officer's final determination of significant deficiencies, the contractor has 45 days to either correct the significant deficiencies or submit an acceptable corrective action plan.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023-06529 Filed 3-29-23; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No DARS-2023-0015; OMB Control No. 0704-0225]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Administrative Matters

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704-0225 through July 31, 2023. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by May 30, 2023.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0225, using any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* osd.dfars@mail.mil. Include OMB Control Number 0750–0001 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Kitchens, at 571–296–7152.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Part 204, Administrative Matters and Related Clause at 252.204; OMB Control Number 0704–0225.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 236.

Responses per Respondent: Approximately 1.56.

Annual Responses: 369.

Average Burden per Response: Approximately 3 hours.

Annual Burden Hours: 1,107.

Needs and Uses: DFARS 204.404–70(a) prescribes use of DFARS clause 252.204–7000, Disclosure of Information, in contracts that require the contractor to access or generate unclassified information that may be sensitive and inappropriate for release to the public. The clause requires the contractor to obtain approval of the contracting officer before release of any unclassified contract-related information outside the contractor's organization, unless the information is already in the public domain. In requesting this approval, the contractor must identify the specific information to be released, the medium to be used, and the purpose for the release. Upon receipt of a contractor's request, the Government reviews the information provided by the contractor to determine if it is sensitive or otherwise inappropriate for release for the stated purpose.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–06591 Filed 3–29–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0014; OMB Control Number 0704–0229]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS) Part 225, Foreign Acquisition and Related Clauses

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704–0229 through July 31, 2023. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by May 30, 2023.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0229, using any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* osd.dfars@mail.mil. Include OMB Control Number 0704–0229 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, at 703–717–3446.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 225, Foreign Acquisition and Related Clauses at 252.225; DD Form 2139; OMB Control Number 0704–0229.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 39,221.

Responses per Respondent: 10, approximately.

Annual Responses: 382,876.

Average Burden per Response: 0.28 hours, approximately.

Annual Burden Hours: 106,730 (106,995 reporting hours and recordkeeping hours).

Needs and Uses: DoD needs this information to ensure compliance with restrictions on the acquisition of foreign products imposed by statute or policy to protect the industrial base; to ensure compliance with U.S. trade agreements and memoranda of understanding that promote reciprocal trade with the U.S. allies; and to prepare reports for submission to the Department of Commerce on the Balance of Payments Program. This information collection includes requirements related to foreign acquisition in DFARS part 225, Foreign Acquisition, and the related clauses at DFARS 252.225 as follows:

DFARS 252.225–7000, Buy American—Balance of Payments Program Certificate, as prescribed in DFARS 225.1101(1) and (1)(i), requires the offeror to identify in its proposal supplies that do not meet the definition of domestic end product, separately listing qualifying country and other foreign end products. The Buy American statute does not apply to acquisitions of commercial information technology.

DFARS 252.225–7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer, and 252.225–7004, Report of Intended Performance Outside the United States and Canada—Submission after Award, as prescribed in DFARS 225.7204(a) and (b) respectively, require offerors and contractors to submit a Report of Contract Performance Outside the United States for subcontracts to be performed outside the United States. The reporting threshold is \$750,000 for contracts that exceed \$15 million. The contractor may submit the report on DD Form 2139, Report of Contract Performance Outside the United States, or a computer-generated report that contains all information required by DD Form 2139.

DFARS 252.225–7005, Identification of Expenditures in the United States, as prescribed in DFARS 225.1103(1), requires contractors incorporated or located in the United States to identify, on each request for payment under contracts for supplies to be used or for construction or services to be performed outside the United States, that part of the requested payment representing estimated expenditures in the United States.

DFARS 252.225–7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, as prescribed at DFARS 225.7003–5(b), requires the offeror to certify that it will take certain actions with regard to specialty metals if the offeror chooses to use the alternative compliance approach when providing commercial derivative military articles to the Government.

DFARS 252.225–7013, Duty-Free Entry, prescribed at DFARS 225.1101(4), requires the contractor or an authorized agent to provide information on shipping documents and customs forms regarding those items that are eligible for duty-free entry.

DFARS 252.225–7018, Photovoltaic Devices—Certificate, as prescribed at DFARS 225.7017–4(b), requires offerors to certify that no photovoltaic devices with an estimated value exceeding the micro-purchase threshold will be utilized in performance of the contract or to specify the country of origin.

DFARS 252.225–7020, Trade Agreements Certificate, as prescribed in DFARS 225.1101(5) and (5)(i), only requires listing of nondesignated country end products. This provision is used in solicitations for all acquisitions subject to the World Trade Organization Government Procurement Agreement.

Alternate II of DFARS 252.225–7021, Trade Agreements, as prescribed in DFARS 225.1101(6) and (6)(ii), in order to comply with a condition of the waiver authority provided by the United States Trade Representative to the Secretary of Defense, requires contractors from a South Caucasus/Central or South Asian state to inform the government of its participation in the acquisition and also advise their governments that they generally will not have such opportunities in the future unless their governments provide reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

DFARS 252.225–7023, Preference for Products or Services from Afghanistan, as prescribed in DFARS 225.7703–4(a), requires offerors to identify products or services that are not products or services from Afghanistan.

DFARS 252.225–7025, Restriction on Acquisition of Forgings, as prescribed in DFARS 225.7102–4, also requires contractor retention of records showing compliance with the restrictions until 3 years after final payment. The contractor agrees to make the records available to the contracting officer upon request. The contractor may request a waiver in accordance with DFARS 225.7102–3.

DFARS 252.225–7032, Waiver of United Kingdom Levies—Evaluation of Offers, and 252.225–7033, Waiver of United Kingdom Levies, as prescribed in DFARS 225.1101(7) and (8) respectively, require United Kingdom offerors and prime contractors, and offerors and prime contractors with subcontracts of a dollar value exceeding \$1 million with United Kingdom firms, to provide certain information necessary for DoD to obtain a waiver of United Kingdom levies.

DFARS 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, as prescribed in DFARS 225.1101(9) and (9)(i), requires separate listing of qualifying country (except Canada), Free Trade Agreement (FTA) country, or other foreign end products. Alternate I, as prescribed in 225.1101(9) and (9)(ii), no longer requires listing of Canadian end products, rather than FTA country end products, in solicitations between \$25,000 and the FTA threshold. The Buy American statute does not apply to acquisitions of commercial information technology.

DFARS 252.225–7046, Exports of Approved Community Members in Response to the Solicitation, as prescribed at DFARS 225.7902–5(a), requires a representation whether exports or transfers of qualifying defense articles were made in preparing the response to the solicitation. If yes, the offeror represents that such exports or transfers complied with the requirements of the provision.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–06525 Filed 3–29–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0012; OMB Control Number 0704–0398]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Describing Agency Needs

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed revision and extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704–0398 through July 31, 2023. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by May 30, 2023.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0398, using any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* osd.dfars@mail.mil. Include OMB Control Number 0704–0398 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Ziegler, 703–901–3176.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation

Supplement (DFARS), Part 211, Describing Agency Needs, and Related Clause at 252.211; OMB Control Number 0704–0398.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 3,503.

Responses per Respondent: 119.

Annual Responses: 416,771.

Average Burden per Response: 0.1 hour, approximately.

Annual Burden Hours: 41,667.

Needs and Uses: DFARS 211.274–6 prescribes the use of the clause at DFARS 252.211–7007, which requires contractors to report data to the DoD Item Unique Identification (IUID) Registry on all serially-managed Government-furnished property (GFP), as well as contractor receipt of non-serially managed items, unless an exception applies. “Serially managed item” means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number. The clause provides a list of specific data elements contractors are to report to the IUID registry in the GFP

module, as well as procedures for updating the registry. DoD needs this information to strengthen the accountability and end-to-end traceability of GFP within DoD. Through electronic notification of physical receipt, DoD is made aware that GFP has arrived at the contractor's facility. The DoD logistics community uses the information as a data source of available DoD equipment. In addition, the DoD organization responsible for contract administration uses the data to test the adequacy of the contractor's property management system.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–06532 Filed 3–29–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–58]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21–58 with attached Policy Justification and Sensitivity of Technology.

Dated: March 27, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

September 30, 2021

The Honorable Nancy Pelosi
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-58, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost \$125 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Jedidiah P. Royal
 Deputy Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001-06-C

Transmittal No. 21-58

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Australia

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 75 million
Other	\$ 50 million
TOTAL	\$125 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* The Government of Australia has requested to buy a United States Navy (USN) EA-18G aircraft. The USN EA-18G aircraft will then be modified into a Royal Australian Air Force (RAAF) EA-18G aircraft configuration.

Major Defense Equipment (MDE):

One (1) EA-18G Growler Aircraft (Lot 38 or later)

Non-MDE:

Also included is engineering and modification; verification and validation flight test efforts; maintenance and storage; U.S. Government and contractor engineering/technical assistance; related studies and analysis support; and other related elements of programmatic, technical and logistics support.

(iv) *Military Department: Navy (AT–P–SCM)*

(v) *Prior Related Cases, if any: AT–P–SCI, AT–P–LEN*

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None*

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex*

(viii) *Date Report Delivered to Congress: September 30, 2021*

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia—EA–18G Growler Aircraft and Related Defense Services

The Government of Australia has requested to buy a United States Navy (USN) EA–18G aircraft. The USN EA–18G aircraft will then be modified into a Royal Australian Air Force (RAAF) EA–18G aircraft configuration. The sale would include one (1) EA–18G Growler aircraft (Lot 38 or later) and engineering and modification; verification and validation flight test efforts; maintenance and storage; U.S. Government and contractor engineering/technical assistance; related studies and analysis support; and other related elements of programmatic, technical and logistics support. The total estimated value is \$125 million.

This proposed sale will support the foreign policy and national security objectives of the United States. Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability.

This proposed sale will allow Australia to effectively maintain its current force projection capability that enhances interoperability with U.S. forces well into the future and maintain their original primary level of aircraft authorized. This aircraft would replace Australia's EA–18G A46–311 aircraft lost in an accident at Nellis Air Force Base. Australia currently employs the EA–18G and will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this aircraft and follow-on support will not alter the basic military balance in the region.

These aircraft will be provided from U.S. Navy stock. There are no known offset agreements proposed in connection with this potential sale.

Implementation of the proposed sale will require U.S. Government and

contractor personnel to visit Australia on a temporary basis in conjunction with program technical oversight and support requirements, including program and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–58

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The EA–18G is a derivative of the two-seat F/A–18F Super Hornet that performs an array of airborne electronic attack (AEA) missions. The EA–18G integrates the capabilities of an advanced AEA system, as well as other complementary systems to provide one of the most capable AEA platforms in the world.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense services listed in this transmittal have been authorized for release and export to the Government of Australia.

[FR Doc. 2023–06622 Filed 3–29–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0026]

Privacy Act of 1974; System of Records

AGENCY: Department of Defense (DoD).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the DoD is

establishing a new Department-wide system of records, titled “DoD Patron Authorization, Retail and Service Activities,” DoD–0018. This system of records covers DoD's maintenance of records about eligible patron authorizations and transactional information associated with retail purchases and services. Retail includes goods and services provided by any DoD organization to authorized patrons including those who are authorized based on Department affiliation.

DATES: This system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before May 1, 2023. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by either of the following methods:

* *Federal Rulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Rahwa Keleta, Privacy and Civil Liberties Division, Directorate for Privacy, Civil Liberties and Freedom of Information, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; OSD.DPCLTD@mail.mil; (703) 571–0070.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is establishing the DoD Patron Authorization, Retail, and Service Activities, DoD–0018, system of records as a DoD-wide Privacy Act system of records. A DoD-wide system of records notice (SORN) supports multiple DoD paper or electronic recordkeeping systems operated by more than one DoD component that maintains the same or

similar kind of information about individuals for the same purpose. Establishment of DoD-wide SORNs help DoD standardize the rules governing the collection, maintenance, use, and sharing of personal information in key areas across the enterprise. DoD-wide SORNs also reduce duplicative and overlapping SORNs published by separate DoD components. The creation of DoD-wide SORNs is expected to make locating relevant SORNs easier for DoD personnel and the public and create efficiencies in the operation of the DoD privacy program.

DoD includes multiple activities which provide goods and services to DoD patrons, their family members, and dependents; visitors to military installations; and other individuals who are affiliated to the military community or the Department (collectively, DoD patrons). Among those activities are military exchanges to include the Army and Air Force Exchange Service (AAFES), the Marine Corps Exchange (MCX), and the Navy Exchange Service Command (NEX), and the Marine Corps Community Services (MCCS), along with the Defense Commissary Agency (DeCA). Each of these types of activities offer a benefit to our military community and those with ties to this community.

This new SORN addresses the collection of general personal financial and business transaction records associated with the benefits provided by organizations such as the military exchanges above and other vendors located on military installations. Included data may consist of biographical information of DoD patrons for identification purposes, personal contact information, military connection, personal financial information, for processing payments and credit requests, records of those patrons who are on the bad check and outstanding debt list, source of patron authorization, and demographic data. Usage of the information includes account maintenance and collection efforts, providing the services requested, and marketing initiatives. Collected data will ensure individuals affiliated with the military are not only authorized to obtain goods, items, and services, but also are able to engage and participate in Exchange transactional matters associated with approved benefits, and payments.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Privacy, Civil Liberties, and Freedom of Information Directorate website at <https://dpcl.d.defense.gov>.

II. Privacy Act

Under the Privacy Act, a “system of records” is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A-108, DoD has provided a report of this system of records to the OMB and to Congress.

Dated: March 27, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

DoD Patron Authorization, Retail, and Service Activities, DoD-0018.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of Defense (Department or DoD), located at 1000 Defense Pentagon, Washington, DC 20301-1000, and other Department installations, offices, or mission locations. Information may also be stored within a government-certified cloud, implemented and overseen by the Department's Chief Information Officer (CIO), 6000 Defense Pentagon, Washington, DC 20301-6000.

SYSTEM MANAGER(S):

The system managers for this system are as follows:

A. Deputy Assistant Secretary of Defense for Military Community and Family Policy, Office of the Under Secretary of Defense (Personnel & Readiness), Deputy Under Secretary of Defense for Manpower and Reserve Affairs, 4000 Defense Pentagon, Washington DC 20301-4000, whsmc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil.

B. Deputy Director/Chief Operating Officer, Defense Commissary Agency, 1300 E Avenue, Fort Lee, VA 23801-1800.

C. Commander, Department of the Army, Family and Morale, Welfare and Recreation Command, 4700 King Street, Alexandria, VA 22302-4414.

D. Policy Official Commander, Navy Installations (Finance Department) Millington Detachment, 5720 Integrity Drive, Millington, TN 38055-6500.

E. Chief of Community Programs, Community Programs Division, Services Directorate, Headquarters Air Force Personnel Center, 2261 Hughes Avenue

Suite 156, Joint Base San Antonio (JBSA), Lackland AFB, TX 78236-9854.

F. Deputy Director/COO, Marine Corps Exchange, Business and Support Services Division (MR), Headquarters, U.S. Marine Corps, 3044 Catlin Ave., Quantico, VA 22134-5009.

G. Director/Chief Executive Officer, Army and Air Force Exchange Service, 3911 S Walton Walker Boulevard, Dallas, TX 75236-1598; 800-527-6790.

H. To obtain information on the system managers at the Combatant Commands, Defense Agencies, or other Field Activities with oversight of the records that are not listed above, please visit www.FOIA.gov to contact the component's Freedom of Information Act (FOIA) office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966 (Pub. L. 89-508, as amended) and Debt Collection Act of 1982 (Pub. L. 97-365, as amended), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, section 31001) as codified in 31 U.S.C. 3711, Collection and Compromise Activities; 10 U.S.C. 2481, Defense Commissary and Exchange Systems: Existence and Purpose; 10 U.S.C. 1146, Commissary and Exchange Benefits; 10 U.S.C. 2488, Combined Exchange and Commissary Stores; 14 U.S.C. 152, Nonappropriated Fund Instrumentalities; DoD Instruction (DoDI) 1330.21, Armed Services Exchange Regulation; DoDI 1330.17, DoD Commissary Program; DoDI 1330.09, Armed Services Exchange Policy; DoDI 1330.21, Armed Services Exchange Regulations; DoD 7000.14-R, Department of Defense Financial Management Regulation Volume 13: “Nonappropriated Funds Policy” and Volume 16: “Department of Defense Debt Management”; and E.O. 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

A. To identify and authenticate individuals who are authorized to obtain DoD privileges for goods and/or services as authorized by Congress and applicable Service regulations.

B. To manage data for statistical analysis, tracking, and reporting for business optimization to include marketing initiatives and advertising and to support regulatory requirements.

C. To control sales, record transactions and payments, identify and act on unpaid debts, and provide a customer rewards program.

D. To interact with financial institutions for the processing of payments received.

E. To monitor sales compliance with Federal laws and regulations as well as

overseas treaties, Status of Forces Agreements (SOFA) requirements, and local government agreements.

F. To process applications for credit; administer and monitor account information; and perform required reports as regulated by statutes or regulations.

G. To authenticate purchases for fraud and abuse detection, loss prevention, and identify potential abuse of privileges.

H. To address and respond to individual's comments or complaints concerning the DoD military exchanges, commissaries, and other vendors located on military installation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals who are authorized to receive privileges or benefits, described in the Purposes of the System section, at any DoD location. This may include current and former military Service members (Active, Reserve, Guard, retirees, veterans), cadets and students, current and retired non-appropriated fund and appropriated fund DoD civilian employees, sponsored family members or other dependents of authorized patrons including children, agents shopping for an authorized patron, and individuals commissioned or contracted with the Federal government.

B. Visitors to DoD facilities who are offered limited-time exchange limited-purchase privileges. These individuals may include members of the public who are invited to a DoD location for special events such as air shows, retirement ceremonies, or military graduations, and those who are stranded on an installation. Also included are individuals authorized by Secretary of Defense regulations such as recipients of the Medal of Honor and selected military personnel of foreign nations.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Personal and Account Information, such as individual's full name, date of birth, Social Security Number (SSN); age; gender; marital status; contact information, such as mailing/physical address, email address, phone numbers; website log-in information; personal automobile license plate number; user name for internet and/or mobile ordering data; social media username (Facebook, Twitter, Flickr, YouTube); individual and household size profiles, demographics data, preferences, and feedback.

B. Employment Information, such as current/past employer's name and contact information; position/grade/rank; salary/wages; Department of

Defense Identification Number (DoD ID Number); branch of Service; projected future station of assignment.

C. Financial Information, such as bank name, bank account number, routing number, check number; credit, debit, and gift card numbers holder data; benefit transfer cards (Women, Infants and Children Programs (WIC) and Supplemental Nutritional Assistance Program (SNAP)) data; credit bureau reports.

D. Transaction/Account Information, such as sales, contracts, and agreements; charges or refunds associated with receipt or the collection of debts for goods or services; coupons or promotions redeemed; claim data for returns or damages of goods/services; records supporting DoD debt collection activities such as copies of returned checks, delinquent payment data, and related communications; video/audio recordings; and registrations and registry logs.

RECORD SOURCE CATEGORIES:

Records and information stored in this system of records are obtained from:

A. Individuals, contractors, and vendors.

B. Government sources (Federal, state, local, tribal and foreign).

C. In addition, information may be obtained from the Defense Enrollment Eligibility Reporting System (DEERS), and other Federal organizations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, all or a portion of the records or information contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its

components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or has confirmed that there has been a breach of the system of records; (2) the DoD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

I. To another Federal, State or local agency for the purpose of comparing to the agency's system of records or to non-Federal records, in coordination with an Office of Inspector General in conducting an audit, investigation, inspection evaluation, or other review as authorized by the Inspector General Act of 1978, as amended.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

K. To a loyalty card, rewards card, points card, advantage card or club card or digital coupon program coupon contractor to verify individual's enrollment in a loyalty, rewards, points, advantage, club or digital coupon program, and to provide discounts, digital coupons or other incentives to be applied to individual's purchases.

L. To on-line ordering fulfillment contractors to allow for the confirmation of orders received, fulfilled, delivered, and closed.

M. To the U.S. Department of the Treasury for centralized administrative or salary offset, including the offset of Federal income tax refunds, for the purpose of collecting debts owed to the U.S. government.

N. To U.S. Department of the Treasury-contracted private collection agencies for the purpose of obtaining collection services, including administrative wage garnishment, to recover debts owed to the U.S. Government.

O. To a consumer reporting agency in accordance with 31 U.S.C. 3711(e), as authorized under 5 U.S.C. 552a(b)(12).

P. To credit card processors, banks, and other financial institutions to process payments or refunds made by credit or debit cards, by check, or other non-cash payment methods.

Q. To appropriate Federal, State, local, territorial, tribal, foreign, or international agencies for the purpose of counterintelligence activities authorized by U.S. law or Executive Order, or for the purpose of executing or enforcing laws designed to protect the national security or homeland security of the United States, including those relating to the sharing of records or information concerning terrorism, homeland security, or law enforcement.

R. To the Bureau of Alcohol, Tobacco, Firearms, and Explosives, State agencies, and other appropriate entities to provide notification of firearms sales in compliance with Federal, DoD, Service policies, and State or local government law.

POLICIES AND PRACTICES FOR STORING OF RECORDS:

Records may be stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records may be stored locally on digital media; in agency-owned cloud environments; or in vendor Cloud Service Offerings certified under the Federal Risk and Authorization Management Program (FedRAMP).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by individual's name; DoD ID Number; SSN; or other personal identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed in accordance with National Archives and Records Administration Schedules. The Military Departments retain records in accordance with their individual Records and Information Management retention schedules. The retention period may be obtained by contacting the system manager for the Military Department.

ADMINISTRATIVE, PHYSICAL, AND TECHNICAL SAFEGUARDS:

DoD safeguards records in this system of records according to applicable rules, policies, and procedures, including all applicable DoD automated systems security and access policies. DoD policies require the use of controls to minimize the risk of compromise of personally identifiable information (PII) in paper and electronic form and to enforce access by those with a need to know and with appropriate clearances. Additionally, DoD has established security audit and accountability policies and procedures which support the safeguarding of PII and detection of potential PII incidents. DoD routinely employs safeguards such as the following to information systems and paper recordkeeping systems: Multifactor log-in authentication including CAC authentication and password; physical token as required; physical and technological access controls governing access to data; network encryption to protect data transmitted over the network; disk encryption securing disks storing data; key management services to safeguard encryption keys; masking of sensitive data as practicable; mandatory information assurance and privacy training for individuals who will have access; identification, marking, and safeguarding of personal information; physical access safeguards including multifactor identification physical access controls, detection and electronic alert systems for access to servers and other network infrastructure; and electronic intrusion detection systems in DoD facilities.

RECORD ACCESS PROCEDURES:

Individuals seeking access to their records should follow the procedures in 32 CFR part 310. Individuals should address written inquiries to the DoD component with oversight of the

records, as the component has Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system of records. The public may identify the contact information for the appropriate DoD office through the following website: www.FOIA.gov. Signed written requests should contain the name and number of this system of records notice along with the full name, current address, and email address of the individual. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the appropriate format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend or correct the content of records about them should follow the procedures in 32 CFR part 310.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2023-06644 Filed 3-29-23; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21-61]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697-9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a

copy of a letter to the Speaker of the House of Representatives, Transmittal 21-61 with attached Policy Justification and Sensitivity of Technology.

Dated: March 27, 2023.
Aaron T. Siegel,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
 BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY
 201 12TH STREET SOUTH, SUITE 101
 ARLINGTON, VA 22202-5408

October 8, 2021

The Honorable Nancy Pelosi
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-61, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost \$985 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Jedidiah P. Royal
 Deputy Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001-06-C

Transmittal No. 21-61

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Australia

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$665 million
Other	\$320 million
TOTAL	\$985 million

(iii) *Description and Quantity of Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Twelve (12) MH-60R Multi-Mission Helicopters
 Thirty (30) T-700-GE-401C Engines (24 installed, 6 spares)
 Twelve (12) APS-153(V) Multi-Mode Radars (installed)
 Twelve (12) AN/AAS-44C(V) Multi-

Spectral Targeting Systems (installed)
 Thirty-four (34) Embedded Global Positioning System/Precise Positioning Service (GPS/PPS)/Inertial Navigation Systems (EGI) with Selective Availability/Anti-Spoofing Module (SAASM) (24 installed, 10 spares)
 Twenty (20) Link 16 Multifunctional Information Distribution Systems (MIDS)—Joint Tactical Radio System (JTRS) (12 installed, 8 spares)
 Twelve (12) GAU–61 Digital Rocket Launchers (aircraft provisions only)
 Twelve (12) Airborne Low Frequency Sonars (ALFS) (aircraft provisions only)
 Eighteen (18) AN/AAR–47 Missile Warning Systems (12 installed, 6 spares)
 Eighteen (18) AN/ALE–47 Chaff and Flare Dispenser, Electronic Countermeasures (12 installed, 6 spares)
 Twelve (12) AN/ALQ–210 Electronic Support Measures (ESM) Systems (installed)
 Twenty-four (24) M299 Missile Launchers
 Twelve (12) GAU–21 Crew Served Guns aircraft provisions (installed, includes aircraft adapter, ammunition bin, and other accessories)
 Twelve (12) M240D Crew Served Gun Cradles (installed)
 Eighteen (18) AN/ARQ–59 Hawklark Radio Terminals (12 installed, 6 spares)

Non-MDE:

Also included are AN/ARC–210 RT–2036 UHF/VHF radios with Communications Security (COMSEC); AN/APX–123 Identification Friend or Foe (IFF) transponders; KIV–78; KIV–6; KOV–21; KGV–135A; Advanced Data Transfer Systems (ADTS); Airborne Low Frequency Sonars (ALFS) Training Simulators/Operational Machine Interface Assistants (ATS OMA); spare engine containers; trade studies with industry to determine the feasibility and cost of implementing provisions for additional passenger seating and modifications to achieve enhanced crew survivability; defense services; spare and repair parts; support and test equipment; communication equipment; ferry support; publications and technical documentation; personnel training and training equipment; United States (U.S.) Government and contractor engineering, technical,

and logistics support services; obsolescence engineering, integration, and test activities required to ensure readiness for the production of the Australian MH–60R helicopters; and other related elements of programmatic, technical and logistics support.

(iv) *Military Department: Navy* (AT–P–SCO)

(v) *Prior Related Cases, if any:* AT–P–SCF, AT–P–GXO, AT–P–KOA, AT–P–KOB, AT–P–REZ

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* October 8, 2021

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia—MH–60R Multi-Mission Helicopters and Related Defense Services

The Government of Australia has requested to buy twelve (12) MH–60R Multi-Mission helicopters; thirty (30) T–700–GE–401C engines (24 installed, 6 spares); twelve (12) APS–153(V) Multi-Mode Radars (installed); twelve (12) AN/AAS–44C(V) Multi-Spectral Targeting Systems (installed); thirty-four (34) Embedded Global Positioning System/Precise Positioning Service (GPS/PPS)/Inertial Navigation Systems (EGI) with Selective Availability/Anti-Spoofing Module (SAASM) (24 installed, 10 spares); twenty (20) Link 16 Multifunctional Information Distribution Systems (MIDS)—Joint Tactical Radio System (JTRS) (12 installed, 8 spares); twelve (12) GAU–61 Digital Rocket Launchers (aircraft provisions only); twelve (12) Airborne Low Frequency Sonars (ALFS) (aircraft provisions only); eighteen (18) AN/AAR–47 Missile Warning Systems (12 installed, 6 spares); eighteen (18) AN/ALE–47 Chaff and Flare Dispenser, Electronic Countermeasures (12 installed, 6 spares); twelve (12) AN/ALQ–210 Electronic Support Measures (ESM) Systems (installed); twenty-four (24) M299 Missile Launchers; twelve (12) GAU–21 Crew Served Guns aircraft provisions (installed, includes aircraft adapter, ammunition bin, and other accessories); twelve (12) M240D Crew Served Gun Cradles (installed); and eighteen (18) AN/ARQ–59 Hawklark Radio Terminals (12 installed, 6 spares). Also included are AN/ARC–210 RT–2036 UHF/VHF radios with Communications Security (COMSEC);

AN/APX–123 Identification Friend or Foe (IFF) transponders; KIV–78; KIV–6; KOV–21; KGV–135A; Advanced Data Transfer Systems (ADTS); Airborne Low Frequency Sonars (ALFS) Training Simulators/Operational Machine Interface Assistants (ATS OMA); spare engine containers; trade studies with industry to determine the feasibility and cost of implementing provisions for additional passenger seating and modifications to achieve enhanced crew survivability; defense services; spare and repair parts; support and test equipment; communication equipment; ferry support; publications and technical documentation; personnel training and training equipment; United States (U.S.) Government and contractor engineering, technical, and logistics support services; obsolescence engineering, integration, and test activities required to ensure readiness for the production of the Australian MH–60R helicopters; and other related elements of programmatic, technical and logistics support. The total estimated value is \$985 million.

This proposed sale will support the foreign policy and national security objectives of the United States. Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability.

This proposed sale will improve Australia's capability to perform anti-surface and anti-submarine warfare missions along with the ability to perform secondary missions including vertical replenishment, search and rescue, and communications relay. Australia will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense. Australia will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment will not alter the basic military balance in the region.

The principal U.S. contractor will be Lockheed Martin Rotary and Mission Systems, Owego, NY. There are no known offset agreements proposed in connection with this potential sale.

Implementation of the proposed sale will require U.S. Government and contractor personnel to visit Australia on a temporary basis in conjunction with program technical oversight and support requirements, including program and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–61

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The MH–60R Multi-Mission Helicopter is employed primarily for anti-submarine and anti-surface warfare missions. The MH–60R carries several sensors and data links to enhance its ability to work in a network-centric battle group and as an extension of its home ship/main operating base. The mission systems consist of the following sensors and subsystems: an acoustics system consisting of a dipping sonar, sonobuoys, and acoustics processor; Multi-Mode Radar (MMR) with integrated Identification Friend or Foe (IFF) interrogator; Radios with COMSEC; Electronic Support Measures (ESM); Integrated Self-Defense (ISD); and Multi-Spectral Targeting System (MTS).

a. GPS/PPS/SAASM—Global Positioning System provides a space-based Global Navigation Satellite System (GNSS) that has reliable location and time information in all weather and at all times and anywhere on or near the earth when and where there is an unobstructed line of sight to four or more OPS satellites. Selective Availability/Anti-Spoofing Module (SAASM) is used by military OPS receivers to allow decryption of

precision OPS coordinates. In addition, the OPS Antenna System (GAS–I) provides protection from enemy manipulation of the OPS system.

b. The AN/APS–153 multi-mode radar with an integrated IFF and Inverse Synthetic Aperture (ISAR) provides target surveillance/detection capability.

c. The AN/ALQ–210 (ESM) system identifies the location of an emitter. The ability of the system to identify specific emitters depends on the data provided.

d. The AN/AAS–44C(V) Multi-spectral Targeting System (MTS) operates in day/night and adverse weather conditions. Imagery is provided by a Forward-Looking Infrared (FLIR) sensor, a color/monochrome day television (DTV) camera, and a Low-Light TV (LLTV).

e. Ultra High Frequency/Very High Frequency (UHF/VHF) Radios (ARC 210) contain embedded sensitive encryption algorithms and keying material.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S.

foreign policy and national security objectives outlined in the Policy Justification.

5. All defense services listed in this transmittal have been authorized for release and export to the Government of Australia.

[FR Doc. 2023–06627 Filed 3–29–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–21]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21–21 with attached Policy Justification.

Dated: March 27, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

SEP 1 6 2021

The Honorable Nancy Pelosi
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-21 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost \$500 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Heidi H. Grant
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001-06-C

Transmittal No. 21-21

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Kingdom of Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 0 million
Other	\$500 million

TOTAL \$500 million

Funding Source: National Funds
 (iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*
Major Defense Equipment (MDE):

None
 Non-MDE:

Continuation of the Maintenance Support Services (MSS) contract that supports the Royal Saudi Land Forces Aviation Command's (RSLFAC) fleet of AH-64D/E, UH-60L, UH-60M, Schweizer 333, and Bell 406CS helicopters, as well as

the future fleet of CH-47F Chinook helicopters. The MSS contract services include management and installation of engineering change proposals and modification work orders; Repair and Return (R&R) management services and component repairs; aircraft simulator logistics, maintenance and technical support; training; maintenance management support for the RSLFAC headquarters staff; and other related elements of logistics and program support.

(iv) *Military Department: Army* (SR-B-ZDA)

(v) *Prior Related Cases, if any:* SR-B-UAF; SR-B-UGZ; SR-B-WAL; SR-B-ZAN; SR-B-ZAU

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* September 16, 2021

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia—Continuation of Maintenance Support Services (MSS)

The Kingdom of Saudi Arabia has requested to buy the continuation of the Maintenance Support Services (MSS) contract that supports the Royal Saudi Land Forces Aviation Command's (RSLFAC) fleet of AH-64D/E, UH-60L, UH-60M, Schweizer 333, and Bell 406CS helicopters, as well as the future fleet of CH-47F Chinook helicopters. The MSS contract services include management and installation of engineering change proposals and modification work orders; Repair and Return (R&R) management services and component repairs; aircraft simulator logistics, maintenance and technical support; training; maintenance management support for the RSLFAC headquarters staff; and other related elements of logistics and program support. The estimated total case value is \$500 million.

This proposed sale will support U.S. foreign policy and national security objectives by helping to improve the security of a friendly country that continues to be an important force for political stability and economic growth in the Middle East.

The proposed sale will improve Saudi Arabia's capability to meet current and future threats by the continuation of MSS services that will aid in the maintenance support of Saudi Arabia's rotary wing aircraft fleet, engines,

avionics, weapons, and missile components. Saudi Arabia will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The vendor is unknown at this time. The purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the vendor.

Implementation of this proposed sale will require the assignment of two (2) U.S. Government and three hundred fifty (350) U.S. contractor representatives to Saudi Arabia for a duration of two (2) years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2023-06626 Filed 3-29-23; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Asian American and Native American Pacific Islander-Serving Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2023 for the Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI) Program, Assistance Listing Number 84.031L. This notice relates to the approved information collection under OMB control number 1840-0798.

DATES:

Applications Available: March 30, 2023.

Deadline for Transmittal of Applications: May 30, 2023.

Deadline for Intergovernmental Review: July 28, 2023.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at www.federalregister.gov/d/2022-26554. Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT:

Pearson Owens, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B109, Washington, DC 20202–

4260. Telephone: (202) 453-7997. Email: Pearson.Owens@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:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The AANAPISI Program provides grants to eligible institutions of higher education (IHEs) to enable them to improve and expand their capacity to serve Asian American and Native American Pacific Islander students. Institutions may use these grants to plan, develop, or implement activities that strengthen the institution's services leading to student success.

Background: While the population of Asian American and Pacific Islanders (AAPI) continues to grow on college campuses, research shows these students are least likely to seek help when it comes to both academic and social emotional supports. For example, research shows that two out of 10 AAPI college students experiencing a mental health issue receives treatment.¹ To combat these problems, this competition includes two competitive preference priorities aimed at providing comprehensive student supports. Additionally, the competition includes a priority that seeks to encourage applicants to rethink how to promote student success by providing wraparound services, utilizing data systems that help target student needs, and coordinating and partnering with other organizations that address student success outcomes.

Priorities: This notice contains two competitive preference priorities. The priorities are from the Secretary's Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Competitive Preference Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 5 points to an application for each priority, depending on how well the application meets the priorities. Applicants may respond to one or both

¹ Nathan Stewart, Supporting the health and well-being of Asian American and Pacific Islander college students. <https://timely.md/blog/supporting-aapi-students-and-communities/>.

priorities, for a total of up to 10 additional points.

Applicants that address one or both of the competitive preference priorities must include in the one-page abstract submitted with the application a statement indicating that they have done so. If the applicant has addressed one or both competitive preference priorities, this information must also be listed on the AANAPISI Program Profile Form in the application booklet.

These priorities are:

Competitive Preference Priority 1: Meeting Student Social, Emotional, and Academic Needs (up to 5 points).

Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students, by creating a positive, inclusive, and identity-safe climate at IHEs through one or more of the following activities:

(a) Fostering a sense of belonging and inclusion for underserved students.

(b) Implementing evidence-based practices for advancing student success for underserved students.

(c) Providing evidence-based professional development opportunities designed to build asset-based mindsets for faculty and staff on campus and that are inclusive with regard to race, ethnicity, culture, language, and disability status.

Competitive Preference Priority 2: Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success (up to 5 points).

Projects that are designed to increase postsecondary access, affordability, completion, and success for underserved students by addressing one or more of the following priority areas:

(a) Increasing postsecondary education access and reducing the cost of college by creating clearer pathways for students between institutions and making transfer of course credits more seamless and transparent.

(b) Increasing the number and proportion of underserved students who enroll in and complete postsecondary education programs, which may include strategies related to college preparation, awareness, application, selection, advising, counseling, and enrollment.

(c) Establishing a system of high-quality data collection and analysis, such as data on persistence, retention, completion, and post-college outcomes, for transparency, accountability, and institutional improvement.

(d) Supporting the development and implementation of student success programs that integrate multiple comprehensive and evidence-based services or initiatives, such as academic

advising, structured/guided pathways, career services, credit-bearing academic undergraduate courses focused on career, and programs to meet basic needs, such as housing, childcare, transportation, student financial aid, and access to technological devices.

Note: Under 34 CFR 607.10(c)(13), grantees may not use funds awarded under this program to pay directly for childcare and transportation expenses.

Definitions: The definitions below are from 34 CFR 77.1 and the Supplemental Priorities.

Evidence-based means the proposed project component is supported by evidence that demonstrates a rationale.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

English learner means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Evidence-based means the proposed project component is supported by evidence that demonstrates a rationale.

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.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at <https://ies.ed.gov/ncee/rel/regions/pacific/pdf/ELMUserGuideJune2014.pdf>. Other sources include: https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf, and https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.*, training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Underserved student means a student in postsecondary education in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) An English learner.

(d) A migrant student.

(e) A student without documentation of immigration status.

(f) A student who is the first in their family to attend postsecondary education.

(g) A student enrolling in or seeking to enroll postsecondary education for the first time at the age of 20 or older.

(h) A student who is working full-time while enrolled in postsecondary education.

(i) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

(j) An adult student in need of improving their basic skills or an adult student with limited English proficiency.

English learner means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Program Authority: 20 U.S.C. 1059g (title III, part A, of the Higher Education Act of 1965, as amended (HEA)).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Note: In 2008, the HEA was amended by the Higher Education Opportunity Act of 2008 (HEOA), Public Law 110–315. Please note that the regulations for the AANAPISI Program in 34 CFR part 607 have not been updated to reflect these statutory changes.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost

Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 607. (e) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants. Five-year Individual Development Grants and Cooperative Arrangement Development Grants will be awarded in FY 2023.

Note: A cooperative arrangement is an arrangement to carry out allowable grant activities between an institution eligible to receive a grant under this part and another eligible or ineligible IHE, under which the resources of the cooperating institutions are combined and shared to better achieve the purposes of this part and avoid costly duplication of effort.

Estimated Available Funds: \$5,623,365.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Individual Development Grants:

Estimated Range of Awards:

\$350,000–\$400,000 per year.

Estimated Average Size of Awards:

\$375,000 per year.

Maximum Award: We will not make an award exceeding \$400,000 for a single budget period of 12 months.

Estimated Number of Awards: 12.

Cooperative Arrangement Development Grants:

Estimated Range of Awards:

\$450,000–\$500,000 per year.

Estimated Average Size of Awards:

\$475,000 per year.

Maximum Award: We will not make an award exceeding \$500,000 for a single budget period of 12 months.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. (a) *Eligible Applicants:* To qualify as an eligible institution under the AANAPISI Program, an institution must be—

(i) Accredited or pre-accredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(ii) Legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree; and

(iii) Designated as an “eligible institution,” as defined in 34 CFR 600.2, by demonstrating that it has (1) an enrollment of needy students as described in 34 CFR 607.3, and (2) low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: The notice announcing the FY 2023 process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements, was published in the **Federal Register** on January 17, 2023 (88 FR 2611). Only institutions that the Department determines are eligible, or which are granted a waiver under the process described in that notice, may apply for a grant in this program.

At the time of submission of their applications, applicants must certify their total undergraduate headcount enrollment and that 10 percent of the IHE's enrollment is Asian American or Native American Pacific Islander. An assurance form, which is included in the application materials for this competition, must be signed by an official for the applicant and submitted.

b. *Relationship between the Title III, Part A Programs and the Developing Hispanic-Serving Institutions (HSI) Program:*

A grantee under the Developing HSI Program, which is authorized under title V of the HEA, may not receive a grant under any HEA, title III, part A program. The title III, part A programs are the Strengthening Institutions Program, the Tribally Controlled Colleges and Universities Program, the AANAPISI Program, the Alaska Native and Native Hawaiian-Serving Institutions Program, the Native American-Serving Nontribal Institutions Program, and the Predominantly Black Institutions Program. Furthermore, a current Developing HSI Program grantee may not give up its Developing HSI Program grant in order to be eligible to receive a grant under the AANAPISI Program or any title III, part A program as described in 34 CFR 607.2(g)(1).

An eligible HSI that is not a current grantee under the Developing HSI Program may apply for a FY 2023 grant under all title III, part A programs for which it is eligible, as well as receive consideration for a grant under the Developing HSI Program. However, a successful applicant may receive only one grant as described in 34 CFR 607.2(g)(1).

c. *Individual Development and Cooperative Arrangement Grants:*

An eligible IHE that submits applications for an Individual Development Grant and a Cooperative

Arrangement Development Grant in this competition may be awarded both in the same fiscal year. However, we will not award a second Cooperative Arrangement Development Grant to an otherwise eligible IHE for an award year for which the IHE already has a Cooperative Arrangement Development Grant under the AANAPISI Program. A grantee with an Individual Development Grant or a Cooperative Arrangement Development Grant may be a subgrantee in one or more Cooperative Arrangement Development Grants. The lead institution in a Cooperative Arrangement Development Grant must be an eligible institution. Partners or subgrantees are not required to be eligible institutions.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds (20 U.S.C. 1057(d)(1)–(2)).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30).

3. *Subgrantees:* A grantee under this competition may award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. Application Submission

Instructions:

Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at www.federalregister.gov/d/2022-26554, which contain requirements and information on how to apply. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 607.10(c).

We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages for Individual Development Grants and no more than 65 pages for Cooperative Arrangement Development Grants and (2) use the following standards below. If you are addressing one or both competitive preference priorities, we recommend that you limit your response to no more than an additional 6 pages total, 3 additional pages for Competitive Preference Priority 1 and 3 additional pages for Competitive Preference Priority 2. Please include a separate heading when responding to one or both competitive preference priorities.

- A “page” is 8.5” x 11”, on one side only, with 1”; margins at the top, bottom, and both sides.

- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract and the bibliography. However, the recommended page limit does apply to all of the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. Applicants should address each of the selection criteria separately for each proposed activity. The selection criteria are worth a total of 100 points; the maximum score for each criterion is noted in parentheses. An applicant that also chooses to address the competitive preference priorities can earn up to 110 points.

(a) *Need for project.* (Maximum 20 points) The Secretary considers the need for the proposed project. In

determining the need for the proposed project, the Secretary considers:

(1) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (10 points)

(2) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (5 points)

(3) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

(b) *Quality of the project design.* (Maximum 25 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5 points)

(3) The extent to which the proposed project demonstrates a rationale (as defined in this notice). (10 points)

(c) *Quality of project services.* (Maximum 10 points) The Secretary considers the quality of the services to be provided by the proposed project.

(1) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3 points)

(2) In addition, the Secretary considers:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (3 points)

(ii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (4 points)

(d) *Quality of project personnel.* (Maximum 10 points) The Secretary considers the quality of the personnel who will carry out the proposed project.

(1) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for

employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3 points)

(2) In addition, the Secretary considers:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator. (4 points)

(ii) The qualifications, including relevant training and experience, of key project personnel. (3 points)

(e) *Adequacy of resources.* (Maximum 5 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers:

(1) The extent to which the budget is adequate to support the proposed project. (3 points)

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (2 points)

(f) *Quality of the management plan.* (Maximum 15 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5 points)

(2) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (5 points)

(3) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (5 points)

(g) *Quality of the project evaluation.* (Maximum 15 points) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (10 points)

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (5 points)

2. *Review and Selection Process:* We remind potential applicants that in

reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will review and score each application in accordance with the selection criteria. A rank order funding slate will be made from this review. Awards will be made in rank order according to the average score received from the peer review and from the competitive preference priority addressed by the applicant.

In tiebreaking situations for development grants, under 34 CFR 607.23(b), we award 1 additional point to an application from an IHE that has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable type institutions that offer similar instruction. We award 1 additional point to an application from an IHE that has expenditures for library materials per FTE enrolled student that are less than the average expenditure for library materials per FTE enrolled student at similar type institutions. We also add 1 additional point to an application from an IHE that proposes to carry out one or more of the following activities:

- (1) Faculty development.
- (2) Funds and administrative management.
- (3) Development and improvement of academic programs.
- (4) Acquisition of equipment for use in strengthening management and academic programs.
- (5) Joint use of facilities.
- (6) Student services.

For the purpose of these funding considerations, we use 2019–2020 data.

If a tie remains after applying the tiebreaker mechanism above, priority will be given to applicants that have the lowest endowment values per FTE enrolled student.

3. Risk Assessment and Specific Conditions: Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. Integrity and Performance System: If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

5. In General: In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

- (a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);
- (b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in

alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. Award Notices: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. Administrative and National Policy Requirements: We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. Open Licensing Requirements: Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. Reporting:

(a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes

and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

5. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the AANAPISI Program:

(a) The percentage of first-time, full-time degree-seeking undergraduate students at 4-year AANAPISIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same AANAPISI.

(b) The percentage of first-time, full-time degree-seeking undergraduate students at 2-year AANAPISIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same AANAPISI.

(c) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at 4-year AANAPISIs who graduate within 6 years of enrollment.

(d) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at 2-year AANAPISIs who graduate within 3 years of enrollment.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with

the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,
Assistant Secretary for Postsecondary Education.

[FR Doc. 2023-06583 Filed 3-29-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0014]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Teacher Cancellation Low Income Directory

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 1, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting "Department of Education" under "Currently Under Review," then check the "Only Show ICR for Public Comment" checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the "View Information Collection (IC) List" link. Supporting statements and other supporting documentation may be found by clicking on the "View Supporting Statement and Other Documents" link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202-377-4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Teacher Cancellation Low Income Directory.

OMB Control Number: 1845-0077.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Government.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 6,840.

Abstract: The Higher Education Act of 1965, as amended, (HEA) allows for up to a one hundred percent cancellation of a Federal Perkins Loan and loan forgiveness of a Federal Family Education Loan and Direct Loan program loan if the graduate teaches full-time in an elementary or secondary school serving low-income students.

The Higher Education Act of 1965, as amended, (HEA) allows for up to a one hundred percent cancellation of a Federal Perkins Loan and loan forgiveness of a Federal Family Education Loan and Direct Loan program loan if the graduate teaches full-time in an elementary or secondary school serving low-income students.

The data collected for the development of the Teacher Cancellation Low Income Directory provides web-based access to a list of all elementary and secondary schools, and educational service agencies that serve a total enrollment of more than 30 percent low income students (as defined under Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended). The Directory allows post-secondary institutions to determine whether or not a teacher, who received a Federal Perkins Loan, Direct Loan, or Federal Family Education Loan at their school, is eligible to receive loan cancellation or forgiveness or that a teacher who received a Teacher Education Assistance for College and Higher Education (TEACH) Grant is meeting the service obligation. This revision request updates the collection with an optional school type data element.

Dated: March 27, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-06630 Filed 3-29-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Minority Science and Engineering Improvement Program (MSEIP)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2023 for the MSEIP, Assistance Listing Number 84.120A. This notice relates to the approved information collection under OMB control number 1840-0109.

DATES:

Applications Available: March 30, 2023.

Deadline for Transmittal of Applications: May 30, 2023.

Deadline for Intergovernmental Review: July 28, 2023.

Pre-Application Webinar information: The Department will hold a pre-application meeting via webinar for prospective applicants. Detailed information regarding this webinar will be provided on the MSEIP website at <http://www2.ed.gov/programs/idadesmsi/index.html>.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at www.federalregister.gov/d/2022-26554. Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Bernadette Hence, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B125, Washington, DC 20202. Telephone: (202) 453-7913. Email: Bernadette.Hence@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:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The MSEIP is designed to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the participation of underrepresented ethnic minorities, particularly minority women, into scientific and technological careers, consistent with nondiscrimination requirements contained in Federal civil rights laws.

Priorities: This notice contains two competitive preference priorities. Competitive Preference Priority 1 is from the Secretary's Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities). Competitive Preference Priority 2 is from 34 CFR 637.31(c).

Competitive Preference Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 9 points to an applicant that meets Competitive Preference Priority 1, depending on how well the application meets the priority, and an

additional 3 points to an applicant that meets Competitive Preference Priority 2.

These priorities are:

Competitive Preference Priority 1: Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success (Up to 9 points).

Projects that are designed to increase postsecondary access, affordability, completion, and success for underserved students by addressing one or more of the following priority areas:

(a) Supporting the development and implementation of high-quality and accessible learning opportunities, including learning opportunities that are accelerated or hybrid online, credit-bearing, work-based, and flexible for working students. (Up to 3 points).

(b) Supporting the development and implementation of evidence-based strategies to promote students' development of knowledge and skills necessary for success in the workforce and civic life. (Up to 3 points).

(c) Providing secondary school students with access to career exploration and advising opportunities to help students make informed decisions about their postsecondary enrollment decisions and to place them on a career path. (Up to 3 points).

Competitive Preference Priority 2: New Potential Grantees (3 points).

Under this priority, we award an additional three points to applicants that have not received MSEIP funding within seven years before the deadline date for submission of applications under this program competition.

Note: Consistent with Federal recordkeeping requirements and Department recordkeeping practices, as well as the Department's Administrative Priorities for Discretionary Grant Programs published in the **Federal Register** on March 9, 2020 (85 FR 13640), rather than require applicants to have never received MSEIP funding, the Department has established a look-back period of seven years.

Note: Applicants may verify their eligibility for Competitive Preference Priority 2 by examining "Grant Recipients" on the MSEIP website: <https://www2.ed.gov/programs/idadesmsi/awards.html>. Only applicants that did not receive new or non-competing continuation awards between FY 2016 and FY 2022 may receive points under this priority.

Definitions: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following definitions apply. The definitions of "children or students with disabilities," "disconnected youth," "English learner," "evidence-based," "military- or veteran-connected

student,” and “underserved student” are from the Supplemental Priorities.

Children or students with disabilities means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37)).

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

English learner means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Evidence-based has the meaning ascribed to it in 34 CFR 77.1

Military- or veteran-connected student means one or more of the following:

(a) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a member of the uniformed services (as defined by 37 U.S.C. 101), in the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, National Guard, Reserves, National Oceanic and Atmospheric Administration, or Public Health Service or is a veteran of the uniformed services with an honorable discharge (as defined by 38 U.S.C. 3311).

(b) A student who is a member of the uniformed services, a veteran of the uniformed services, or the spouse of a service member or veteran.

(c) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a veteran of the uniformed services (as defined by 37 U.S.C. 101).

Underserved student means students in K–12 programs, students in postsecondary education or career and technical education, and adult learners, in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A technologically unconnected youth.

(h) A migrant student.

(i) A student experiencing homelessness or housing insecurity.

(j) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(k) A student who is in foster care.

(l) A student without documentation of immigration status.

(m) A pregnant, parenting, or caregiving student.

(n) A student impacted by the justice system, including a formerly incarcerated student.

(o) A student who is the first in their family to attend postsecondary education.

(p) A student enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(q) A student who is working full-time while enrolled in postsecondary education.

(r) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

(s) An adult student in need of improving their basic skills or an adult student with limited English proficiency.

(t) A student performing significantly below grade level.

(u) A military- or veteran-connected student.

Program Authority: 20 U.S.C. 1067–1067k.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 637. (e) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds:

\$5,951,303.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards:

Institutional Project Grants, Special Project Grants, and Cooperative Project Grants: \$250,000–\$300,000 for up to 36 months.

Estimated Average Size of Awards:

\$275,000 for up to 36 months.

Maximum Award: We will not make an award exceeding \$300,000 for a 12-month period or \$900,000 for a 36-month period.

Estimated Number of Awards:

Institutional Project Grants: 17.

Special Project Grants: 2.

Cooperative Project Grants: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* The eligibility of an applicant is dependent on the type of MSEIP grant the applicant seeks. There are four types of MSEIP grants: institutional project, special project, cooperative project, and design project.

Institutional project grants are grants that support the implementation of a comprehensive science improvement plan, which may include any combination of activities for improving the preparation of minority students, particularly minority women, for careers in science.

There are two types of special project grants. First, there are special project grants for which only minority institutions are eligible. These special project grants support activities that (1) improve quality training in science and engineering at minority institutions; or (2) enhance the minority institutions' general scientific research capabilities. There also are special project grants for which all applicants are eligible. These special project grants support activities that (1) provide a needed service to a group of eligible minority institutions; or (2) provide in-service training for project directors, scientists, and engineers from eligible minority institutions.

Cooperative project grants assist groups of nonprofit accredited colleges and universities to work together to conduct a science improvement project.

Design project grants assist minority institutions that do not have their own

appropriate resources or personnel to plan and develop long-range science improvement programs. We will not award design project grants in the FY 2023 competition.

(a) For institutional project grants, eligible applicants are limited to—

(1) Public and private nonprofit institutions of higher education that (i) award baccalaureate degrees; and (ii) are minority institutions;

(2) Public or private nonprofit institutions of higher education that (i) award associate degrees; and (ii) are minority institutions that (A) have a curriculum that includes science or engineering subjects; and (B) enter into a partnership with public or private nonprofit institutions of higher education that award baccalaureate degrees in science and engineering.

(b) For special project grants for which only minority institutions are eligible, eligible applicants are described in paragraph (a).

(c) For special project grants for which all applicants are eligible, eligible applicants include those described in paragraph (a), and—

(1) Nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees that (i) provide a needed service to a group of minority institutions; or (ii) provide in-service training to project directors, scientists, and engineers from minority institutions; or

(2) A consortia of organizations that provide needed services to one or more minority institutions, the membership of which may include (i) institutions of higher education that have a curriculum in science or engineering; (ii) institutions of higher education that have a graduate or professional program in science or engineering; (iii) research laboratories of, or under contract with, the Department of Energy, the Department of Defense, or the National Institutes of Health; (iv) relevant offices of the National Aeronautics and Space Administration, National Oceanic and Atmospheric Administration, National Science Foundation, and National Institute of Standards and Technology; (v) quasi-governmental entities that have a significant scientific or engineering mission; or (vi) institutions of higher education that have State-sponsored centers for research in science, technology, engineering, and mathematics.

(d) For cooperative project grants, eligible applicants are groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in 34 CFR 637.4(b).

Note: As defined in 34 CFR 637.4(b), “minority institution” means an accredited college or university whose enrollment of a single minority group or a combination of minority groups as defined in 34 CFR 637.4 exceeds 50 percent of the total enrollment. The Secretary verifies this information from the data on enrollments (Integrated Postsecondary Education Data System (IPEDS) 12-Month Enrollment survey) furnished by the institution to the National Center for Education Statistics (NCES), United States Department of Education.

Note: The Secretary uses IPEDS data to verify enrollment in lieu of the Higher Education General Information Surveys HEGIS XIII survey data specified in 34 CFR 637.4(b), as those surveys are no longer conducted.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www2.ed.gov/about/offices/list/ocfo/intro.html.

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to

entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. Application Submission

Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at www.federalregister.gov/d/2022-26554, which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. Submission of Proprietary

Information: Given the types of projects that may be proposed in applications for the MSEIP grant competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define “business information” and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information. Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under “Other Attachments Form,” please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 65 pages and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.

- Double-space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; budget section, including the narrative budget justification; the assurance and certifications; the eligibility form; or the one-page abstract, the resumes, the biography, or letters of support. However, the recommended page limit does apply to all the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 637.32. Applicants should address each of the selection criteria. The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria. All applications will be evaluated based on the selection criteria as follows:

(a) Identification of need for the project (Total 5 points).

(1) The Secretary reviews each application for information that shows the identification of need for the project.

(2) The Secretary looks for information that shows—

(i) An adequate needs assessment;

(ii) An identification of specific needs in science; and

(iii) Involvement of appropriate individuals, especially science faculty, in identifying the institutional needs.

(b) Plan of operation (Total 20 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) Higher quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) Methods of coordination. (See 34 CFR 75.580)

(c) Quality of key personnel (Total 10 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of a racial or ethnic minority group, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) Budget and cost effectiveness (Total 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objective of the project.

Note: The Comprehensive Budget Narrative will be part of the information reviewed under this selection criterion.

(e) Evaluation plan (Total 15 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

Note: In considering the quality of an evaluation plan, for each proposed objective,

the Secretary may consider, among other things, the baseline indicators of progress for each proposed grant year, the methods of evaluation, the types of data that will be collected to assess the final project outcomes and the data collection procedures that will be used, the proposed timetable for conducting the evaluation, and the procedures for analyzing and using both formative and summative data.

Note: In considering whether an evaluation plan shows methods of evaluation that are objective, the Secretary considers whether the evaluation is to be conducted by an independent evaluator.

(f) Adequacy of resources (Total 5 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

Note: An Applicant should indicate if these resources are available at its institution or at partner institutions or if the applicant plans to acquire them.

(g) Potential institutional impact of the project (Total 10 points).

(1) The Secretary reviews each application to determine the extent to which the proposed project gives evidence of potential for enhancing the institution's capacity for improving and maintaining quality science education for its minority students, particularly minority women.

(2) The Secretary looks for information that shows—

(i) For an institutional or cooperative project, the extent to which both the established science education program(s) and the proposed project will expand or strengthen the established program(s) in relation to the identified needs; or

(ii) For a special project, the extent to which it addresses needs that have not been adequately addressed by an existing institutional science program or takes a particularly new and exemplary approach that has not been taken by any existing institutional science program.

(h) Institutional commitment to the project (Total 5 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to continue the project activities when funding ceases.

(2) The Secretary looks for information that shows—

(i) Adequate institutional commitment to absorb any after-the-grant burden initiated by the project;

(ii) Adequate plans for continuation of project activities when funding ceases;

(iii) Clear evidence of past institutional commitment to the provision of quality science programs for its minority students; and

(iv) A local review statement signed by the chief executive officer of the institution endorsing the project and indicating how the project will accelerate the attainment of the institutional goals in science.

(i) Expected outcomes (Total 10 points).

(1) The Secretary reviews each application to determine the extent to which minority students, particularly minority women, will benefit from the project.

(2) The Secretary looks for information that shows—

(i) Expected outcomes likely to result in the accomplishment of the program goal;

(ii) Educational value for science students; and

(iii) Possibility of long-term benefits to minority students, faculty, or the institution.

(j) Scientific and educational value of the proposed project (Total 10 points).

(1) The Secretary reviews each application for information that shows its potential for contributions to science education.

(2) The Secretary looks for information that shows—

(i) The relationship of the proposed project to the present state of science education;

(ii) The use or development of effective techniques and approaches in science education; and

(iii) Potential use of some aspects of the project at other institutions.

2. Review and Selection Process: We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will review and score each application in accordance with the

selection criteria. A rank order funding slate will be made from this review. Awards will be made in rank order according to the average score received from the peer review and from the competitive preference priorities addressed by the applicant.

Based on 34 CFR 637.32, if the Secretary has insufficient funding to award multiple applications with the same score, the Secretary gives priority to previous grantees with a proven record of success, as well as to applications that contribute to achieving balance among funded projects with respect to (1) geographic region; (2) academic discipline; and (3) project type.

3. Risk Assessment and Specific Conditions: Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. Integrity and Performance System: If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant

plus all the other Federal funds you receive exceed \$10,000,000.

5. In General: In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. Award Notices: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. Administrative and National Policy Requirements: We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. Open Licensing Requirements: Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately

identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established the following performance measures for the MSEIP grants: (1) the percentage of change in the number of full-time, degree-seeking minority undergraduate students at the grantee's institution enrolled in the fields of engineering or physical or biological sciences, compared to the average minority enrollment in the same fields in the three-year period immediately prior to the beginning of the current grant; and (2) the percentage of minority students enrolled at four-year minority institutions in the fields of engineering or physical or biological sciences who graduate within six years of enrollment. Please see the application package for details of data collection and reporting requirements for these measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds

in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2023-06581 Filed 3-29-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[EERE-2014-BT-STD-0005]

RIN 1904-AD15

Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products; Extension of Public Comment Period

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

ACTION: Supplemental notice of proposed rulemaking; extension of public comment period.

SUMMARY: On February 1, 2023, the U.S. Department of Energy ("DOE") published a supplemental notice of proposed rulemaking ("SNOPR") and announcement of public meeting proposing amended energy conservation standards for conventional cooking products and announcing a public meeting to receive comment on the proposed standards and associated analyses and results. ("February 2023 SNOPR") The notice provided an opportunity for submitting written comments, data, and information by April 3, 2023. DOE received a request from the Association of Home Appliance Manufacturers (AHAM) to extend the written comment period. DOE has reviewed this request and is granting a 14-day extension of the public comment period to allow comments to be submitted until April 17, 2023.

DATES: The comment period for the SNOPR published on February 1, 2023 (88 FR 6818) is extended. Written comments and information regarding the SNOPR will be accepted on or before April 17, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov under docket number EERE-2014-BT-STD-0005. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2014-BT-STD-0005, by any of the following methods:

Email: ConventionalCookingProducts2014STD0005@ee.doe.gov. Include the docket number EERE-2014-BT-STD-0005 in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. If possible, please submit all items on a

compact disc (“CD”), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (“faxes”) will be accepted.

Docket: The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), 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 information that is exempt from public disclosure. The docket web page can be found at www.regulations.gov/docket/EERE-2014-BT-STD-0005. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

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

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 287–6122. Email: Celia.Sher@hq.doe.gov.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION: DOE published a notice of proposed determination (“NOPD”) on December 14, 2020, in which DOE initially determined that current standards for consumer conventional cooking products do not need to be amended. 85 FR 80982. DOE stated in the December 2020 NOPD that it would reevaluate the energy savings associated with identified technology options for the

product if it considered performance standards in a future rulemaking. *Id.* at 85 FR 81004. Subsequently, on August 22, 2022, DOE published a final rule establishing a test procedure for conventional cooking tops. 87 FR 51492. As a result of this new test procedure, DOE issued the February 2023 SNOPR, in which DOE reevaluated its analysis from the December 2020 NOPD and tentatively concluded that amended energy conservation standards for consumer conventional cooking products are technologically feasible and economically justified. 88 FR 6818. The February 2023 SNOPR announced a public meeting to receive comment on the proposed standards and provided for the written submission of comments by April 3, 2023. *Id.*

On March 10, 2023, DOE received a request from the Association of Home Appliance Manufacturers (“AHAM”) to extend the written comment period on the February 2023 SNOPR by 45 days. AHAM stated that there are a significant number of other regulatory comment periods open simultaneously, many of which impact the same manufacturers, and all of which impact AHAM’s ability to work with their members to discuss and analyze the proposed rule and provide meaningful comment to DOE. (AHAM, No. 764).

Given the unique circumstances of this product, which include a long rulemaking history, several changes in rulemaking course, and the availability of new data, DOE determines that an extension of the public comment period is appropriate to allow interested parties additional time to submit comments for DOE’s consideration. Thus, DOE is extending the comment period by 14 days, until April 17, 2023.

Signing Authority

This document of the Department of Energy was signed on March 22, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 24, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–06486 Filed 3–29–23; 8:45 am]

BILLING CODE 6450–01–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: RP23–586–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Update Initial Retainage Rate 4–1–2023 to be effective 4/1/2023.

Filed Date: 3/23/23.

Accession Number: 20230323–5130.

Comment Date: 5 p.m. ET 4/4/23.

Docket Numbers: RP23–587–000.

Applicants: MountainWest Pipeline, LLC.

Description: § 4(d) Rate Filing: Statement of Negotiated Rates Version 22 to be effective 4/24/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5011.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: RP23–588–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Rate Schedule S–2 Tracker Filing eff 2/1/2023 to be effective 2/1/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5082.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: RP23–589–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—BP Energy/Eco-Energy to be effective 3/31/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5091.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: RP23–590–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: List of Non-Conforming Service Agreements (Clean-Up_2023–03) to be effective 4/24/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5141.

Comment Date: 5 p.m. ET 4/5/23.

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 24, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-06601 Filed 3-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD23-3-000]

Commission Information Collection Activities (FERC-725B(5)); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC-725B(5), (Mandatory Reliability Standards, Critical Infrastructure Protection (CIP-003-9)—Temporary Placeholder for FERC-725B that is pending approval at OMB.

DATES: Comments on the collection of information are due May 30, 2023.

ADDRESSES: You may submit copies of your comments (identified by Docket No. RD23-3-000) by one of the following methods:

Electronic filing through <http://www.ferc.gov>, is preferred.

- **Electronic Filing:** Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed

by USPS mail or by hand (including courier) delivery:

- **Mail via U.S. Postal Service Only:**

Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- **Hand (including courier) Delivery:**

Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at (866) 208-3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov>.

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email at DataClearance@FERC.gov, telephone at (202) 502-8663.

SUPPLEMENTARY INFORMATION:

Title: FERC-725B(5) (Mandatory Reliability Standards, Critical Infrastructure Protection (CIP-003-9))—Temporary Placeholder for FERC-725B that is pending approval at OMB.

OMB Control No.: 1902-NEW.

Type of Request: New collection request for FERC-725B(5)—temporary placeholder for FERC-725B information collection requirements with changes to the reporting requirements.

Abstract: On August 8, 2005, Congress enacted the Energy Policy Act of 2005.¹ The Energy Policy Act of 2005 added a new section 215 to the Federal Power Act (FPA),² which requires a Commission-certified Electric Reliability Organization to develop mandatory and enforceable Reliability Standards,³ including requirements for cybersecurity protection, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the Electric Reliability Organization subject to Commission oversight, or the

Commission can independently enforce Reliability Standards.

On February 3, 2006, the Commission issued Order No. 672,⁴ implementing FPA section 215. The Commission subsequently certified the North American Electric Reliability Corporation (NERC) as the Electric Reliability Organization. The Reliability Standards developed by NERC become mandatory and enforceable after Commission approval and apply to users, owners, and operators of the Bulk-Power System, as set forth in each Reliability Standard.⁵ The CIP Reliability Standards require entities to comply with specific requirements to safeguard bulk electric system (BES) Cyber Systems⁶ and their associated BES Cyber Assets. These standards are results-based and do not specify a technology or method to achieve compliance, instead leaving it up to the entity to decide how best to comply.

The Commission has approved multiple versions of the CIP Reliability Standards submitted by NERC, partly to address the evolving nature of cyber-related threats to the Bulk-Power System. High impact systems include large control centers. Medium impact systems include smaller control centers, ultra-high voltage transmission, and large substations and generating

⁴ *Rules Concerning Certification of the Elec. Reliability Org.; and Procedures for the Establishment, Approval, and Enft of Elec. Reliability Standards*, Order No. 672, 71 FR 8661 (Feb. 17, 2006), 114 FERC ¶ 61,104, *order on reh'g*, Order No. 672-A, 71 FR 19814 (Apr. 28, 2006), 114 FERC ¶ 61,328 (2006).

⁵ NERC uses the term "registered entity" to identify users, owners, and operators of the Bulk-Power System responsible for performing specified reliability functions with respect to NERC Reliability Standards. See, e.g., *Version 4 Critical Infrastructure Protection Reliability Standards*, Order No. 761, 77 FR 24594 (Apr. 25, 2012), 139 FERC ¶ 61,058, at P 46, *order denying clarification and reh'g*, 140 FERC ¶ 61,109 (2012). Within the NERC Reliability Standards are various subsets of entities responsible for performing various specified reliability functions. We collectively refer to these as "entities."

⁶ NERC defines BES Cyber System as "[o]ne or more BES Cyber Assets logically grouped by a responsible entity to perform one or more reliability tasks for a functional entity." NERC, *Glossary of Terms Used in NERC Reliability Standards*, at 5 (2020), https://www.nerc.com/files/glossary_of_terms.pdf (NERC Glossary of Terms). NERC defines BES Cyber Asset as

A Cyber Asset that if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, mis-operation, or non-operation, adversely impact one or more Facilities, systems, or equipment, which, if destroyed, degraded, or otherwise rendered unavailable when needed, would affect the reliable operation of the Bulk Electric System. Redundancy of affected Facilities, systems, and equipment shall not be considered when determining adverse impact. Each BES Cyber Asset is included in one or more BES Cyber Systems.

Id. at 4.

¹ Energy Policy Act of 2005, Public Law 109-58, sec. 1261 *et seq.*, 119 Stat. 594 (2005).

² 16 U.S.C. 824o.

³ Section 215 of the FPA defines Reliability Standard as a requirement, approved by the Commission, to provide for reliable operation of existing bulk-power system facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the Bulk-Power System. However, the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity. *Id.* at 824o(a)(3).

facilities. The remainder of the BES Cyber Systems are categorized as low impact systems. Most requirements in the CIP Reliability Standards apply to high and medium impact systems; however, a technical controls requirement in Reliability standard CIP-003, described below, applies only to low impact systems.

The Commission is currently revising CIP-003 on this submission of Docket No. RD23-3-000 to update CIP-003-8 to CIP-003-9. The FERC-725B information collection requirements are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.⁷ OMB's regulations require approval of certain information collection requirements imposed by agency rules.⁸ Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility,

the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Reliability Standard CIP-003-9 Security Management Controls: requires entities to specify consistent and sustainable security management controls that establish responsibility and accountability to protect BES Cyber Systems against compromise that could lead to mis-operation or instability on the Bulk-Power System. Specifically, the Reliability Standard CIP-003-9 is revised to add requirements for entities to adopt mandatory security controls for vendor electronic remote access used at low impact BES Cyber Systems. It is part of the implementation of the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System.

Type of Respondents: Business or other for profit, and not for profit institutions.

*Estimate of Annual Burden:*⁹

The Commission bases its paperwork burden estimates on the changes in

paperwork burden presented by the proposed revision to CIP Reliability Standard CIP-003-9 as compared to the current Commission-approved Reliability Standard CIP-003-8. As discussed above, the immediate order addresses the area of modification to the CIP Reliability Standards: adopting mandatory security controls for vendor electronic remote access used at low impact BES Cyber Systems.

The CIP Reliability Standards, viewed as a whole, implement a defense-in-depth approach to protecting the security of BES Cyber Systems at all impact levels.¹⁰ The CIP Reliability Standards are objective-based and allow entities to choose compliance approaches best tailored to their systems.¹¹ The NERC Compliance Registry, as of January 4, 2023, identifies approximately 1,592 U.S. entities that are subject to mandatory compliance with Reliability Standards. Of this total, we estimate that 1,579 entities will face an increased paperwork burden under Reliability Standard CIP 003-9, estimating that a majority of these entities will have one or more low impact BES Cyber Systems. Based on these assumptions, the Commission estimates the total annual burden and cost as follows:

RD23-3-000 COMMISSION ORDER

[Mandatory Reliability Standards for Critical Infrastructure Protection Reliability Standards CIP-003-9]

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ¹²	Total annual burden hours & total annual cost	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Create vendor remote access policy (one-time) ¹³ .	1,579	1	1,579	60 hrs.; \$5,340	94,740 hrs.; \$8,431,860 ..	\$5,340
Updates and reviews of vendor remote access policy (ongoing).	1,579	1	1,579	3.5 hrs.; \$311.50	5,527 hrs. (rounded); \$491,903.	311.50
Total burden for FERC-725B(5) under CIP-003-9.	.....	.....	3,158	.....	100,267 hrs.; \$8,923,763	.....

The one-time burden of 94,740 hours that only applies for Year 1 will be averaged over three years (94,740 hours ÷ 3 = 31,580 hours/year over three years). The number of responses is also averaged over three years (1,579 responses ÷ 3 = 526.33 responses/year).

The ongoing burden of 5,527 hours/year applies for only Years 2 and

beyond (5,527 hours (Year 2) + 5,527 hours (Year 3) ÷ 3 = 5,527 hours. Similarly, the number of responses is also averaged over three years ((1,579 responses (Year 2) + 1,579 (Year 3)) ÷ 3 = 1,579¹⁴).

The responses and burden hours for Years 1-3 will total respectively as follows for Year 1 one-time burden:

Year 1: 526.33 responses; 31,580 hours
Year 2: 526.33 responses; 31,580 hours
Year 3: 526.33 responses; 31,580 hours

The responses and burden hours for Years 1-3 will total respectively as follows for Ongoing and beyond: 1,579 responses and 5,527 hours

⁷ 44 U.S.C. 3507(d) (2012).

⁸ 5 CFR 1320.11 (2017).

⁹ "Burden" is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

¹⁰ Order No. 822, 154 FERC ¶ 61,037 at 32.

¹¹ *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 73 FR 7368 (Feb. 7, 2008), 122 FERC ¶ 61,040, at P 72 (2008); *order on reh'g*, Order No. 706-A, 123 FERC ¶ 61,174 (2008); *order on clarification*, Order No. 706-B, 126 FERC ¶ 61,229 (2009).

¹² The loaded hourly wage figure (includes benefits) is based on the average of three occupational categories for 2022 found on the Bureau of Labor Statistics website (http://www.bls.gov/oes/current/naics2_22.htm):

Legal (Occupation Code: 23-0000): \$145.35.

Electrical Engineer (Occupation Code: 17-2071): \$77.02.

Office and Administrative Support (Occupation Code: 43-0000): \$43.62 (\$145.35 + \$77.02 + \$43.62) ÷ 3 = \$88.66. The figure is rounded to \$89.00 for use in calculating wage figures in this Commission Order.

¹³ This one-time burden applies in Year One only.

The following shows the annual cost burden for each group, based on the burden hours in the table above:

- *Year 1*: \$8,431,860 (Onetime)
- *Years 2 and 3*: \$491,903 (Ongoing)

The paperwork burden estimate includes costs associated with the initial development of a policy to address requirements relating to: (1) clarifying the obligations pertaining to electronic access control for low impact BES Cyber Systems; (2) adopting mandatory security controls for transient electronic devices (e.g., thumb drives, laptop computers, and other portable devices frequently connected to and disconnected from systems) used at low impact BES Cyber Systems; and (3) requiring responsible entities to have a policy for declaring and responding to CIP Exceptional Circumstances related to low impact BES Cyber Systems. Further, the estimate reflects the assumption that costs incurred in year 1 will pertain to policy development, while costs in years 2 and 3 will reflect the burden associated with maintaining logs and other records to demonstrate ongoing compliance.

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 24, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-06600 Filed 3-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23-4-000]

Commission Information Collection Activities (FERC-73) Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC Form No. 73, (Oil Pipeline Service Life Data), which will be submitted to the Office of Management and Budget (OMB) for review. No Comments were received on the 60-day notice published on January 19, 2023.

DATES: Comments on the collection of information are due May 1, 2023.

ADDRESSES: Send written comments on FERC-73 to OMB through www.reginfo.gov/public/do/PRAMain. Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902-0019) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain.

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC23-4-000) by one of the following methods: Electronic filing through <https://www.ferc.gov>, is preferred.

- **Electronic Filing:** Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

- **Mail via U.S. Postal Service Only:** Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- **Hand (including courier) delivery:** Deliver to: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at www.reginfo.gov/public/do/PRAMain. Using the search function under the "Currently Under Review" field, select Federal Energy Regulatory Commission; click "submit," and select "comment" to the right of the subject collection. *FERC submissions* must be formatted and filed in accordance with submission

guidelines at: <https://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at: (866) 208-3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov/ferc-online/overview>.

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email at DataClearance@FERC.gov, telephone at (202) 502-8663.

SUPPLEMENTARY INFORMATION:

Title: FERC Form No. 73, Oil Pipeline Service Life Data.

OMB Control No.: 1902-0019.

Type of Request: Three-year extension of the FERC Form No. 73 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission collects FERC Form No. 73 information as part of its authority under the Interstate Commerce Act, 49 U.S.C. 60501, *et al.* FERC Form No. 73 contains necessary information for the review of oil pipeline companies' proposed depreciation rates, as regulated entities are required to provide service life data illustrating the remaining physical life of an oil pipeline's properties. This is used to calculate the company's cost of service and its transportation rates to access customers. The Commission implements these filing reviews under the purview of 18 CFR part 357.3, *FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis*, and 18 CFR part 347. Parts 357.3 and 347 require an oil pipeline company to submit information under FERC Form No. 73 when: (1) requesting approval for new or changed depreciation rates of an oil pipeline; or (2) being directed by the Commission to file the service life data during an investigation of its book depreciation rates.

Type of Respondent: Oil pipeline companies.

Estimate of Annual Burden:¹

The Commission estimates the annual public reporting burden for the information collection as below:

¹ "Burden" is the total time, effort, or financial resources expended by persons to generate,

maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation

of what is included in the information collection burden, refer to 5 CFR 1320.3.

FERC FORM NO. 73, OIL PIPELINE SERVICE LIFE DATA

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ²	Total annual burden & total annual cost	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Oil Pipeline Depreciation Analysis.	22	1	22	40 hrs.; \$3,640	880 hrs.; \$80,080 ..	\$3,640

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 24, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-06604 Filed 3-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22-501-000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Southeast Energy Connector Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Southeast Energy Connector Project (Project), proposed by Transcontinental Gas Pipe Line Company, LLC (Transco) in the above-referenced docket. Transco requests authorization to modify an existing compressor station and construct 1.9 miles of pipeline in Coosa and Chilton counties, Alabama to provide 150,000 dekatherms per day of natural gas transportation service to an existing electric power generator in Shelby County, Alabama.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The U.S. Army Corps of Engineers is considering adopting the EA to fulfill its NEPA obligations.

The proposed Project includes the following facilities:

- installation of a 11,110 horsepower Solar Taurus 70 gas-fired turbine (Compressor Unit 5) in a new building with associated appurtenant facilities at Transco's existing Compressor Station 105 site in Coosa County, Alabama;
- modification of Compressor Units 1-3 at Compressor Station 105;
- construction of 1.9 miles of new 42-inch-diameter E mainline loop¹ pipeline (Chilton Loop) from mileposts (MP) 909.63 to 911.53 in Chilton and Coosa counties, Alabama; and
- removal of the existing pigging² traps at MPs 909.63 and 911.53 on Transco's existing E mainline and tie-in the Chilton Loop.

The Commission mailed a copy of the *Notice of Availability of the Environmental Assessment for the Southeast Energy Connector Project* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the

project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (www.ferc.gov), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>), select "General Search" and enter the docket number in the "Docket Number" field, excluding the last three digits (*i.e.*, CP22-501). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on April 24, 2023.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's website (www.ferc.gov) under the link to *FERC*

² The Commission staff estimates the average cost in salary and benefits for the average respondent based on the Commission's 2022 average cost for salary plus benefits at \$91/hour.

¹ A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

² A "pig" is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature on the Commission's website (www.ferc.gov) under the link to *FERC Online*. With *eFiling*, you can provide comments in a variety of formats by attaching them as a file with your submission. New *eFiling* users must first create an account by clicking on "*eRegister*." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–501–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at <https://www.ferc.gov/how-intervene>.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (www.ferc.gov) using the *eLibrary* link. The *eLibrary* link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called *eSubscription* which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the

documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for *eSubscription*.

Dated: March 24, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023–06606 Filed 3–29–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23–10–000]

Commission Information Collection Activity (FERC–603); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collections, FERC–603 (Critical Energy/Electric Infrastructure Information Data Request).

DATES: Comments on the collections of information are due May 30, 2023.

ADDRESSES: You may submit your comments (identified by Docket No. IC23–10–000) on FERC–603 by one of the following methods:

Electronic filing through <https://www.ferc.gov> is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

- *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <https://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this

docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov>.

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email at DataClearance@FERC.gov, or by telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–603, Critical Energy/Electric Infrastructure Information Data Request.

OMB Control No.: 1902–0197.

Type of Request: Three-year extension of the FERC–603 information collection requirements with no changes to the current reporting and recordkeeping requirements.¹

Abstract: In accordance with section 215A(d) of the Federal Power Act² and 18 CFR 388.113, this collection of information provides that persons may seek Critical Energy/Electric Infrastructure Information (CEII). To receive CEII, they must show they have a legitimate need for such information, and they must submit a non-disclosure agreement that decreases the likelihood that such information could be used to plan or execute terrorist attacks.

This collection of information provides an alternative to seeking CEII in accordance with the Freedom of Information Act (FOIA).³ That statute requires federal agencies to disclose the requested information unless one or more of several FOIA exemptions justifies withholding of the requested information. In the case of CEII, two FOIA exemptions are likely to apply to CEII,⁴ and frequently result in a decision to withhold the information from the FOIA requester. The Commission realizes that this process could prevent persons with a legitimate need for CEII from obtaining such information. For example, market participants seeking to develop new or expanded energy resources may have such a need.

In the aftermath of the September 11, 2001 terrorist attacks, the Commission determined that it was important to improve the appropriate treatment of

¹ The CEII request form and five versions of the non-disclosure agreement (General Non-Disclosure Agreement, Media Non-Disclosure Agreement, Federal Agency Acknowledgement and Agreement, State Agency Employee Non-Disclosure Agreement, and Consultant Non-Disclosure Agreement) are posted at <https://www.ferc.gov/legal/ceii-foia/ceii.asp>.

² 16 U.S.C. 824o–1(d).

³ 5 U.S.C. 552 (2018).

⁴ The relevant FOIA exemptions are Exemption 3, which allows the withholding of information prohibited from disclosure by another statute and Exemption 7, which protects from disclosure certain law enforcement information, including information the disclosure of which might jeopardize a person's life or safety.

CEII, both to assist requesters with a legitimate need for CEII, and to restrict access to the sensitive information due to the ongoing terrorism threat. The Commission promulgated 18 CFR 388.113 to achieve those goals.

Under 18 CFR 388.13(g)(5), a request for CEII must contain:

- The requester's name, title, address, and telephone number;
- The name, address, and telephone number of the person or entity on whose behalf the information is requested;
- A detailed Statement of Need; and
- An executed non-disclosure agreement.

Under 18 CFR 388.133(h)(2), the non-disclosure agreement indicates the

individual's willingness to adhere to limitations on the use and disclosure of the information requested, and stipulates at minimum that the CEII:

- Will only be used for the purpose for which it was requested;
- May only be discussed with authorized recipients;
- Must be kept in a secure place in a manner that would prevent unauthorized access;
- Must be destroyed or returned to the Commission upon request; and
- Is not subject to release under either FOIA or Sunshine Laws.

In addition, the non-disclosure agreement provides that the Commission may audit the recipient's

compliance with the non-disclosure agreement; that a recipient is obligated to protect the CEII even after a designation has lapsed⁵ until the CEII Coordinator⁶ determines the information should no longer be designated as CEII; and the recipient is required to promptly report all unauthorized disclosures of CEII to the Commission.

Type of Respondents: Persons seeking access to CEII.

Estimate of Annual Burden: The Commission estimates the total annual burden⁷ and cost⁸ for this information collection as follows.

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response	Total annual burden hours & total annual cost	Cost per respondent (\$)
(1)	(2)	(3) (column 1 × column 2)	(4)	(5) (column 3 × column 4)	(6) (column 5 ÷ column 1)
50	1	50	0.3 hrs.; \$27.30	15 hrs.; \$1,365	\$27.30

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-06598 Filed 3-29-23; 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: EC23-67-000.

Applicants: Foxhound Solar, LLC, Dominion Solar Projects VI, Inc.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Foxhound Solar, LLC, et al.

Filed Date: 3/23/23.

Accession Number: 20230323-5260.

Comment Date: 5 p.m. ET 4/13/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22-865-002.

Applicants: Glaciers Edge Wind Project, LLC.

Description: Compliance filing: Compliance Filing re Revised Rate Schedule of Glaciers Edge to be effective 4/1/2022.

Filed Date: 3/24/23.

Accession Number: 20230324-5177.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER22-1262-001.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: NYISO Compliance re: FERC 2/23/23 Order on NYISO Order 676-J Compliance to be effective 2/23/2023.

Filed Date: 3/24/23.

Accession Number: 20230324-5192.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23-22-001.

Applicants: Puget Sound Energy, Inc.

Description: Compliance filing: PSE Compliance Filing to be effective 5/22/2023.

Filed Date: 3/24/23.

Accession Number: 20230324-5099.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23-426-002.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2023-03-23 NAESB Compliance Filing—Version 003.3 to be effective 2/23/2023.

Filed Date: 3/23/23.

Accession Number: 20230323-5181.

Comment Date: 5 p.m. ET 4/13/23.

Docket Numbers: ER23-1058-001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Deficiency Response, Requests for 5-day

⁵ The Commission's regulation at 18 CFR 388.113 provides criteria and procedures to designate information as CEII. A designation may last for up to five years, unless it is re-designated. A designation may be removed at any time, in whole or in part, if the Commission determines that the unauthorized disclosure of CEII can no longer be used to impair the security or reliability of the bulk-power system or distribution facilities or any other form of energy infrastructure.

⁶ The regulation at 18 CFR 375.313 delegates authority to a CEII Coordinator to receive and review all requests for CEII, make determinations regarding such requests, establish reasonable conditions on the release of CEII, and release CEII to requesters who agree in writing to abide by the conditions set forth by the Coordinator.

⁷ "Burden" is the total time, effort, or financial resources expended by persons to generate,

maintain, retain, or disclose or provide information to or for a federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

⁸ The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon the FERC's 2022 average cost for salary plus benefits, the average hourly cost is \$91/hour.

Comments and Action by April 7 to be effective 4/8/2023.

Filed Date: 3/23/23.

Accession Number: 20230323–5117.

Comment Date: 5 p.m. ET 3/28/23.

Docket Numbers: ER23–1255–000.

Applicants: Hecate Grid Clermont 1 LLC.

Description: Hecate Grid Clermont 1 LLC submits Supplement Information response to Waiver Request and a Request for Shortened Comment Period.

Filed Date: 3/24/23.

Accession Number: 20230324–5167.

Comment Date: 5 p.m. ET 3/28/23.

Docket Numbers: ER23–1363–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of ISA, SA No. 6822; Queue No. AF1–328 in Docket ER23–1363–000 to be effective 2/14/2023.

Filed Date: 3/23/23.

Accession Number: 20230323–5204.

Comment Date: 5 p.m. ET 4/13/23.

Docket Numbers: ER23–1449–000.

Applicants: AVEP BESS, LLC.

Description: Baseline eTariff Filing: Certificate of Concurrence for LGIA Co-Tenancy Agreement to be effective 3/24/2023.

Filed Date: 3/23/23.

Accession Number: 20230323–5171.

Comment Date: 5 p.m. ET 4/13/23.

Docket Numbers: ER23–1450–000.

Applicants: Chaparral Springs, LLC.

Description: § 205(d) Rate Filing: Certificate of Concurrence for LGIA Co-Tenancy Agreement to be effective 3/24/2023.

Filed Date: 3/23/23.

Accession Number: 20230323–5175.

Comment Date: 5 p.m. ET 4/13/23.

Docket Numbers: ER23–1451–000.

Applicants: Rabbitbrush Solar, LLC.

Description: § 205(d) Rate Filing: Certificate of Concurrence for LGIA Co-Tenancy Agreement to be effective 3/24/2023.

Filed Date: 3/23/23.

Accession Number: 20230323–5190.

Comment Date: 5 p.m. ET 4/13/23.

Docket Numbers: ER23–1452–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 6835; Queue No. AD2–162 to be effective 3/6/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5064.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1453–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: SCE Revision to Formula Rate Tariff Authorized 2023 PBOPs Expense Amount to be effective 1/1/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5081.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1454–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Joint 205: Second Amended LGIA among NYISO, National Grid, Ball Hill Wind SA2473 to be effective 3/10/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5090.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1455–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: OATT Revised Attachment H–1—(Rev Depreciation Rates 2023) to be effective 6/1/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5095.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1456–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 6671; Queue No. AF1–038 to be effective 5/24/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5127.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1457–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, SA No. 6846; Queue Nos. P22, O38 to be effective 2/24/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5132.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1458–000.

Applicants: Tucson Electric Power Company.

Description: § 205(d) Rate Filing: Amended and Restated Sunzia Transmission Interconnection Agreement to be effective 5/24/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5145.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1459–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 997; Queue No. I12 (amend) to be effective 5/24/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5173.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1460–000.

Applicants: San Diego Gas & Electric Company.

Description: § 205(d) Rate Filing: Service Agreement No. 408 FERC Electric Tariff Volume No. 11 to be effective 1/10/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5176.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1461–000.

Applicants: San Diego Gas & Electric Company.

Description: § 205(d) Rate Filing: Service Agreement No. 396 FERC Electric Tariff Volume No. 11 to be effective 11/29/2021.

Filed Date: 3/24/23.

Accession Number: 20230324–5180.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1462–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–03–24 SA 3205 Termination of Clinton Wind-Duke Energy GIA (J446) to be effective 3/25/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5183.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1463–000.

Applicants: Black Hills Power, Inc.

Description: § 205(d) Rate Filing: Revisions to Rate Schedule No. 10, Balancing Authority Agreement to be effective 4/1/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5187.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1464–000.

Applicants: Otter Tail Power Company.

Description: § 205(d) Rate Filing: Remedial Action Scheme Service to be effective 5/23/2023.

Filed Date: 3/24/23.

Accession Number: 20230324–5191.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1465–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2023–03–24 MISO Tariff Waiver re: Planning Resource Auction to be effective N/A.

Filed Date: 3/24/23.

Accession Number: 20230324–5228.

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 24, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-06596 Filed 3-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8909-027]

Dietrich Drop Hydro, LLC, Big Wood Canal Company, American Falls Reservoir District No. 2; Notice of Application for Partial Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On February 16, 2023, Dietrich Drop Hydro, LLC (transferor), Big Wood Canal Company (co-licensee), and American Falls Reservoir District No. 2 (transferee), filed jointly an application for a partial transfer of license for the Dietrich Drop Water Power Project No. 8909.¹ The project is located on the Milner-Gooding Canal, Lincoln County, Idaho.

The applicants seek Commission approval to partially transfer the license for the Dietrich Drop Water Power Project from the Dietrich Hydro, LLC and Big Wood Canal Company as co-licensees to Big Wood Canal Company and American Falls Reservoir District No. 2 as co-licensees. The transferee will be required by the Commission to comply with all the requirements of the license as though it were the original licensee.

Applicants Contact: For Dietrich Drop Hydro, LLC (transferor): Randall Osteen, Hull Street Energy, LLC, General Counsel, Portfolio Companies, 4747 Bethesda Avenue, Suite 1220, Bethesda, MD 20814, Phone: (410) 303-4174, Email: rosten@hullstreetenergy.com, and Julia S. Wood, Rock Creek Energy Group, LLP, 1 Thomas Circle NW, Suite 700, Washington, DC 20005, Phone: (202) 998-2770, Email: jwood@rockcreekenergygroup.com.

For Big Wood Canal Company and American Falls Reservoir District No. 2

(transferee): Kevin Lakey, Manager, 409 N Apple Street, Shoshone, ID 83352, Phone: (208) 886-2331, Email: manager@bigwoodcanal.com, and Miriah Elliott, Wood Hydro LLC, 711 E Turtle Point Drive, Irvins, UT 84738, Phone: (801) 891-4147, Email: miriah@tsorenson.net

FERC Contact: Anumzziatta Purchiaroni, Phone: (202) 502-6191, Email: Anumzziatta.purchiaroni@ferc.gov.

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

In lieu of electronic filing, you may submit a paper copy. Submissions sent via U.S. Postal Service must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-8909-027. Comments emailed to Commission staff are not considered part of the Commission record.

Dated: March 24, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-06605 Filed 3-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15297-000]

BOST2 Hydroelectric, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 25, 2023, BOST2 Hydroelectric, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Marathon County Pumped Storage Project (Marathon County Project or project) to be located near approximately six miles southwest of the City of Hatley in Marathon County, Wisconsin. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project is a closed loop pumped storage project that would consist of the following: (1) a 76-foot-high embankment, 80-acre-footprint circular or oval upper reservoir constructed as a geotextile-lined rockfill embankment with a total storage capacity of approximately 5,300 acre-feet of active water operating between a maximum water surface elevation of 1,361 feet mean sea level (msl) and a minimum water surface elevation of 1,295 feet msl; (2) a reinforced concrete "morning glory" type upper intake of circular configuration with a maximum outside diameter of approximately 95-feet and an inside diameter of 38-feet; (3) an approximately 2,770-foot-long, 23-foot-diameter vertical penstock excavated in granitic bedrock extending between the upper intake and the pump/turbines below; (4) an underground concentric circular tunnels lower reservoir with diameters from 5,400 feet to 4,200 feet excavated in granitic bedrock, located 2,100 feet below the ground surface elevation of 1,269 feet msl, with a usable storage capacity approximately the same as the upper reservoir and operational water elevations between minus 798 feet msl and minus 840 feet msl; (5) a 460-foot-long, 80-foot-wide, 160-foot-high powerhouse located 200 feet below the lower reservoir containing three reversible pump/turbine-motor/generator units rated for 333 megawatts

¹ Idaho Renewable Resources, et al., 39 FERC ¶ 62,210 (1987).

each; (6) a 410-foot-long, 60-foot-wide, 160-foot-high underground transformer gallery; (7) a 200-foot-square above ground substation; (8) a 200 to 500-foot-long, 345-kilovolt (kV) transmission line extending from the substation to an existing 345-kV transmission line owned by others; and (9) appurtenant facilities. There would be no federal land within the proposed project boundary. The estimated annual generation of the Marathon County Project would be 2,628 gigawatt-hours.

Applicant Contact: Mr. Douglas Spaulding, P.E., Nelson Energy, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; phone: (952) 544-8133.

FERC Contact: Sergiu Serban; phone: (202) 502-6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-15297-000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-15297) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 24, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-06597 Filed 3-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4639-033]

Ampersand Christine Falls Hydro, LLC; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 4639-033.

c. *Date filed:* September 29, 2021.

d. *Applicant:* Ampersand Christine Falls Hydro, LLC (Ampersand).

e. *Name of Project:* Christine Falls Hydroelectric Project (Christine Falls Project or project).

f. *Location:* On the Sacandaga River near the Village of Speculator, Hamilton County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contacts:* Mr. Sayad Moudachirou, Licensing Manager, Ampersand Christine Falls Hydro LLC, 717 Atlantic Avenue, Suite 1A, Boston, MA 02111, Phone: 617-933-7206, Email: sayad@ampersandenergy.com; and Mr. Jason Huang, Asset Manager, Ampersand Christine Falls Hydro LLC, 717 Atlantic Avenue, Suite 1A, Boston, MA 02111, Phone: 773-919-0923, Email: jasonh@ampersandenergy.com.

i. *FERC Contact:* Andy Bernick at (202) 502-8660, or andrew.bernick@ferc.gov

j. *Deadline for filing scoping comments:* April 23, 2023.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy via U.S. Postal Service to: Kimberly D. Bose, Secretary,

Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Christine Falls Hydroelectric Project (P-4639-033).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The Christine Falls Project consists of the following existing facilities: (1) a 15-foot-high, 152.6-foot-long concrete gravity dam (includes both abutments), with 3-foot-high wooden flashboards installed along the crest of the 135-foot-long spillway; (2) a reservoir with a surface area of 1.1 acres and a storage capacity of 4-acre feet at a normal water surface elevation of 1,699.7 feet National Geodetic Vertical Datum of 1929 (NGVD29); (3) an intake structure; (4) a 613-foot-long steel penstock with a diameter of 6 feet that bifurcates into 3-foot-diameter, 45-foot-long and 4-foot-diameter, 32-foot-long penstocks; (5) a brick and concrete powerhouse containing two turbine-generator units (*i.e.*, one 275-kilowatt (kW) unit and one 575-kW unit) with a total capacity of 850 kW; (7) a tailrace with a depth of 21 feet; (8) a 610-foot-long bypassed reach; (9) a 185-foot-long underground transmission line connecting the generating units to a 1,000-kilovolt-ampere step-up transformer; (10) a 9,315-foot-long, 4.16/13.2-kilovolt underground transmission line from the transformer to a point of interconnection; and (11) appurtenant facilities.

The Christine Falls Project is operated in a run-of-river mode, with a minimum flow of 25 cubic feet per second (cfs) into the bypassed reach during the months of March, April, and May, and a minimum flow of 10 cfs during the remainder of the year. The project is operated to maintain a normal water surface elevation of 1,699.7 feet NGVD29 with 3-foot-high wooden flashboards in place and has an average

annual generation of 2,478 megawatt-hours.

Ampersand proposes to operate the project in a run-of-river mode with an impoundment level fluctuation limit of 3 inches from the dam crest or flashboards when in place (*i.e.*, from a normal water surface elevation of 1,699.68 feet NGVD29 with flashboards in place, and 1,696.68 feet NGVD29 without flashboards in place). As described in its October 11, 2022, settlement agreement with the U.S. Fish and Wildlife Service, New York State Department of Environmental Conservation, American Whitewater, and the New York State Council of Trout Unlimited, Ampersand proposes the following changes to project operation and facilities: (1) providing two seasonal minimum flow regimes over the spillway and through the bypass gate within 3 years of license issuance: (a) a 15-cfs minimum flow or inflow, whichever is less, from June 1 to October 31, and (b) a 35-cfs minimum flow or inflow, whichever is less, from November 1 to May 31; (2) installing trash racks with 1-inch clear spacing or the equivalent (*e.g.*, an overlay-type system) whereby approach velocities are less than or equal to 2 feet per second, as measured 1 foot in front of the trash racks; and (3) installing and maintaining a year-round downstream fish passage structure.

Ampersand also proposes to: (1) remove the existing 9,315-foot-long transmission line from the project, stating that the line also provides power to the project from the grid and thus should not be considered a primary transmission line; and (2) enhance recreational opportunities by sharing data on daily river conditions, constructing a parking area for two vehicles, and collecting and hauling trash.

m. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.*, scoping 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 (P-4639). For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the

Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (866) 208-3676 or TTY (202) 502-8659.

n. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process:*

Commission staff will prepare either an environmental assessment (EA) or an environmental impact statement (EIS) that describes and evaluates the probable effects, if any, of the licensee's proposed action and alternatives. The EA or EIS will consider environmental impacts and reasonable alternatives to the proposed action. The Commission's scoping process will help determine the required level of analysis and satisfy the National Environmental Policy Act (NEPA) scoping requirements, irrespective of whether the Commission prepares an EA or an EIS. At this time, we do not anticipate holding on-site scoping meetings. Instead, we are soliciting written comments and suggestions on the preliminary list of issues and alternatives to be addressed in the NEPA document, as described in scoping document 1 (SD1), issued March 24, 2023. Commission staff may hold a public environmental site visit to examine project facilities and lands within the project boundary at a later date.

Copies of SD1 outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD1 may be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1-866-208-3676 or for TTY, (202) 502-8659.

Dated: March 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-06603 Filed 3-29-23; 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: EC23-65-000.

Applicants: GC PGR Holdco, LLC, PGR Holdco, LLC, Allora Solar, LLC, PGR 2021 Lessee 19, LLC, Beulah Solar, LLC, PGR 2021 Lessee 2, LLC, TWE Bowman Solar Project, LLC, PGR Lessee L, LLC, Bulldog Solar, LLC, PGR 2021 Lessee 9, LLC, Cabin Creek Solar, LLC, PGR 2021 Lessee 12, LLC, Centerfield Cooper Solar, LLC, PGR Lessee O, LLC, Eastover Solar, LLC, PGR 2021 Lessee 17, LLC, Fresh Air Energy XXIII, LLC, PGR 2022 Lessee 2, LLC, Gunsight Solar, LLC, PGR 2021 Lessee 15, LLC, Highest Power Solar, LLC, PGR 2021 Lessee 7, LLC, Landrace Holdings, LLC, PGR 2021 Lessee 18, LLC, Lick Creek Solar, LLC, PGR 2021 Lessee 5, LLC, Peony Solar, LLC, Phobos Solar, LLC, PGR 2021 Lessee 11, LLC, Sonny Solar, LLC, PGR 2021 Lessee 13, LLC, Stanly Solar, LLC, PGR 2021 Lessee 1, LLC, Sugar Solar, LLC, PGR 2020 Lessee 8, LLC, Trent River Solar, LLC, Trent River Solar Mile Lessee, LLC, Virginia Line Solar, LLC, PGR 2022 Lessee 1, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of GC PGR HoldCo, LLC, et al.

Filed Date: 3/21/23.

Accession Number: 20230321-5176.

Comment Date: 5 p.m. ET 4/11/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23-102-000.

Applicants: Cavalier Solar A, LLC.

Description: Cavalier Solar A, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/21/23.

Accession Number: 20230321-5127.

Comment Date: 5 p.m. ET 4/11/23.

Docket Numbers: EG23-103-000.

Applicants: Foxhound Solar, LLC.

Description: Foxhound Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/21/23.

Accession Number: 20230321-5131.

Comment Date: 5 p.m. ET 4/11/23.

Docket Numbers: EG23-104-000.

Applicants: Texas Solar Nova 2, LLC.

Description: Texas Solar Nova 2, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/22/23.

Accession Number: 20230322–5044.

Comment Date: 5 p.m. ET 4/12/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–1319–000.

Applicants: Baldy Mesa Solar, LLC.

Description: Supplement to March 13, 2023, Baldy Mesa Solar, LLC tariff filing.

Filed Date: 3/21/23.

Accession Number: 20230321–5180.

Comment Date: 5 p.m. ET 3/31/23.

Docket Numbers: ER23–1435–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc., submits the Forward Capacity Auction Results Filing for Forward Capacity Auction 17.

Filed Date: 3/21/23.

Accession Number: 20230321–5170.

Comment Date: 5 p.m. ET 5/5/23.

Docket Numbers: ER23–1436–000.

Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.

Description: § 205(d) Rate Filing: Revised Rate Schedules FERC Nos. 1,2,3,4,5,7 and 9 to be effective 6/1/2023.

Filed Date: 3/22/23.

Accession Number: 20230322–5070.

Comment Date: 5 p.m. ET 4/12/23.

Docket Numbers: ER23–1437–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 5875; Queue No. AE2–129 (amend) to be effective 5/22/2023.

Filed Date: 3/22/23.

Accession Number: 20230322–5073.

Comment Date: 5 p.m. ET 4/12/23.

Docket Numbers: ER23–1438–000.

Applicants: Midcontinent

Independent System Operator, Inc., International Transmission Company, ITC Midwest LLC, Michigan Electric Transmission Company, LLC.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2023–03–22 Revisions to Attachment GG–ITC Companies Annual True-Up Procedure to be effective 6/1/2023.

Filed Date: 3/22/23.

Accession Number: 20230322–5093.

Comment Date: 5 p.m. ET 4/12/23.

Docket Numbers: ER23–1439–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA/ICSA, Service Agreement Nos. 6829/6830; Queue No. AD1–100 to be effective 5/22/2023.

Filed Date: 3/22/23.

Accession Number: 20230322–5107.

Comment Date: 5 p.m. ET 4/12/23.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD23–5–000.

Applicants: North American Electric Reliability Corporation.

Description: North American Electric Reliability Corporation submits Petition for Approval of Proposed Reliability Standard PRC–023–6.

Filed Date: 3/2/23.

Accession Number: 20230302–5212.

Comment Date: 5 p.m. ET 4/21/23.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.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 22, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–06590 Filed 3–29–23; 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: RP23–580–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Compliance filing: 2023 Annual Penalty Revenue Crediting Report to be effective N/A.

Filed Date: 3/20/23.

Accession Number: 20230320–5144.

Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: RP23–581–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: § 4(d) Rate Filing:

Negotiated Rate & Update Non-

Conforming to be effective 4/1/2023.

Filed Date: 3/22/23.

Accession Number: 20230322–5034.

Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: RP23–582–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Non-Conforming NRA—BP to be effective 4/1/2023.

Filed Date: 3/22/23.

Accession Number: 20230322–5038.

Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: RP23–583–000.

Applicants: Bear Creek Storage Company, L.L.C.

Description: Compliance filing: Annual Report on Operational Transactions 2023 to be effective N/A.

Filed Date: 3/22/23.

Accession Number: 20230322–5099.

Comment Date: 5 p.m. ET 4/3/23.

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/fercensearch.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 22, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–06589 Filed 3–29–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–10799–01–OCSPP]

Access to Confidential Business Information by Abt Associates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Abt Associates of Rockville,

MD to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than April 6, 2023.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Colby Lintner/Adam Schwoerer, Program Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-8182; email address: lintner.colby@epa.gov or (202) 564-4767; schwoerer.adam@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2003-0004, is available online at <https://www.regulations.gov> or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. 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 is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

II. What action is the Agency taking?

Under contract number 68HERH22A0018 task order number 68HERH23F0085, contractor Abt Associates, and Abt Associates' sites

located at 6130 Executive Blvd., Rockville, MD and 10 Fawcett Street, Suite 5, Cambridge, MA will assist the Office of Pollution Prevention and Toxics (OPPT) by providing economic and other regulatory and pre-regulatory support for TSCA and EPCRA actions.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68HERH22A0018, call order number 68HERH23F0085, Abt Associates will require access to CBI submitted under all Sections of TSCA to perform successfully the duties specified under the contract. Abt Associates' personnel will be given access to information claimed or determined to be CBI information submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA will provide Abt Associates access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and Abt Associate's sites located at 6130 Executive Blvd., Rockville, MD and 10 Fawcett Street, Suite 5, Cambridge, MA and telework locations of Abt Associates personnel in accordance with EPA's *TSCA CBI Protection Manual* and the Rules of Behavior for Virtual Desktop Access to OPPT Materials, including TSCA CBI.

Access to TSCA data, including CBI, will continue until February 12, 2028. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Abt Associates' personnel will be required to sign nondisclosure agreements and will be briefed on specific security procedures for TSCA CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: March 27, 2023.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2023-06586 Filed 3-29-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2022-0509; FRL-7661-02-OCSP]

Notice of Approval Status; Certifying Authorities' Amended Plans for Certification of Commercial and Private Applicators of Restricted Use Pesticides; Batch Two

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing its approval of twelve amended certification plans for certifying applicators of Restricted Use Pesticides (RUPs) from the following certifying authorities: Arizona Department of Agriculture (AZDA), Connecticut Department of Energy & Environmental Protection (CTDEEP), Delaware Department of Agriculture (DDA), District of Columbia Department of Energy and Environment (DOEE), Hawaii Department of Agriculture (HDOA), Mississippi Department of Agriculture and Commerce (MDAC), New Hampshire Department of Agriculture, Markets and Food (NHDAFM), New Jersey Department of Agriculture (NJDEP), Nevada Department of Agriculture (NDA), Office of the Indiana State Chemist (OISC), South Dakota Department of Agriculture and Natural Resources (SDDANR), and Washington State Department of Agriculture (WSDA). The amended plans are consistent with the existing regulatory requirements, including revisions made in 2017 to enhance and improve the competency of certified applicators of RUPs and persons working under their direct supervision. The 2017 regulatory revisions are intended to further reduce potential exposure of RUPs to certified applicators and those working under their direct supervision, other workers, the public, and the environment. Federal, state, territory, and tribal certifying authorities with existing certification plans were required to revise their existing plans to conform with the updated federal standards for RUP applicator certification and receive EPA approval by the established regulatory deadline.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: The designated EPA point of contact for the Certification Plan of interest as listed in Table 1 of Unit I.B.

For general information contact: Carolyn Schroeder, Pesticide Re-Evaluation Division (7508M), 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. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a federal, state, territory, or tribal agency who administers a certification program for pesticides applicators. You may also be potentially affected by this action if you are: A registrant of RUP products; a person who applies RUPs, including those under the direct supervision of a certified applicator; a person who relies upon the availability of RUPs; someone who hires a certified applicator to apply an RUP; a pesticide safety educator; or other person who provides pesticide safety training for pesticide applicator certification or recertification. 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 (Crop Production) (NAICS code 111).
- Nursery and Tree Production (NAICS code 111421).
- Agricultural Pest Control and Pesticide Handling on Farms (NAICS code 115112).
- Crop Advisors (NAICS codes 115112, 541690, 541712).
- Agricultural (Animal) Pest Control (Livestock Spraying) (NAICS code 115210).
- Forestry Pest Control (NAICS code 115310).
- Wood Preservation Pest Control (NAICS code 321114).
- Pesticide Registrants (NAICS code 325320).
- Pesticide Dealers (NAICS codes 424690, 424910, 444220).

- Industrial, Institutional, Structural & Health Related Pest Control (NAICS code 561710).

- Ornamental & Turf, Rights-of-Way Pest Control (NAICS code 561730).
- Environmental Protection Program Administrators (NAICS code 924110).
- Governmental Pest Control Programs (NAICS code 926140).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of these documents and other related information?

For assistance in locating documents related to the approved plans identified in this notice, please consult the designated EPA point of contact for the Certification Plan of interest as listed in Table 1 of this unit, or the general contact person listed under **FOR FURTHER INFORMATION CONTACT**.

TABLE 1—DESIGNATED EPA POINT OF CONTACTS FOR THE CERTIFICATION PLANS

EPA region	Certification plan	EPA point of contact	POC phone	Email
Region 1	CTDEEP	Robert Koethe	(617) 918-1535	koethe.robert@epa.gov .
	NHDAFM			
Region 2	NJDEP	Tara Glynn	(732) 906-6183	glynn.tara@epa.gov .
Region 3	DDA	Courtenay Hoernemann	(215) 814-2216	hoernemann.courtenay@epa.gov .
	DOEE			
Region 4	MDAC	Richard Corbett	(404) 562-9008	corbett.richard@epa.gov .
Region 5	OISC	Donald Baumgartner	(312) 886-7835	baumgartner.donald@epa.gov .
Region 8	SDDANR	Blake Huff	(303) 312-6718	huff.blake@epa.gov .
Region 9	AZDA	Katy Wilcoxen	(415) 947-4205	wilcoxen.katy@epa.gov .
	HDOA			
	NDA			
Region 10	WSDA	Bethany Plewe	(208) 378-5753	plewe.bethany@epa.gov .

II. What is the Agency's authority for taking this action?

Section 11 of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, requires certifying authorities to have an EPA-approved certification plan to certify applicators of RUPs. The Certification of Pesticide Applicators (CPA) regulation at 40 CFR part 171 was amended in 2017 (Ref. 1). As a result, federal, state, territory, and tribal certifying authorities with existing certification plans were required to revise their existing certification plans to conform with the updated federal standards for the certification of applicators of RUPs and submit their revisions to EPA by March 2020 for EPA review and approval. The CPA regulation specifies that the existing certification plans remain in place until the revised plans are approved by EPA on or before the regulatory deadline established in 40 CFR 171.5. The

Agency has since issued a final rule extending the original deadline for certification plans to comply with the updated federal standards under the 2017 CPA rule to November 4, 2023 (Ref. 2).

III. What action is the Agency taking?

This action gives notice that the following twelve certifying authorities' certification plans submitted to the Agency meet or exceed the standards of 40 CFR part 171: AZDA, CTDEEP, DDA, DOEE, HDOA, MDAC, NDA, NHDAFM, NJDEP, OISC, SDDANR, and WSDA. EPA hereby gives notice that the twelve amended certification plans for certifying applicators of RUPs listed in this document are now approved plans; the certifying authorities may certify pesticide applicators and continue with implementation of the certification plans as outlined in the approved plans.

These twelve plans represent the second in a series of batched notifications announcing the approval of the federal, state, territory, and tribal certification plans moving through the approval process. These batched notifications will continue to occur on a regular basis as plans are approved. EPA also provides frequent status updates regarding the reviews and approvals of state and territory certification plans on its website at <https://www.epa.gov/pesticide-worker-safety/certification-standards-pesticide-applicators>.

IV. References

The following is a list of documents that are related to the issuance of this Notice. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Pesticides; Certification of Pesticide

Applicators; Final Rule. **Federal Register**. 82 FR 952, January 4, 2017 (FRL-9956-70).

2. EPA. Pesticides; Certification of Pesticide Applicators; Further Extension to Expiration Date of Certification Plans; Final Rule. **Federal Register**. 87 FR 50953, August 19, 2022 (FRL-9134.1-04-OCSP).

Authority: 7 U.S.C. 136–136y.

Dated: March 24, 2023.

Mary Elissa Reaves,

*Director, Pesticide Re-Evaluation Division,
Office of Pesticide Programs.*

[FR Doc. 2023-06571 Filed 3-29-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-10560-01-R6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Reissuance—Class I Hazardous Waste Injection; INVISTA Orange Plant, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the land disposal restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to INVISTA Channelview Plant for two Class I hazardous waste injection wells at the Invista Orange Plant located in Orange, Texas.

DATES: This action was effective as of October 14, 2020.

ADDRESSES: Copies of the petition reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Division, Safe Drinking Water Branch (6WD-D), 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102.

FOR FURTHER INFORMATION CONTACT: Ken Johnson, Supervisor, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665-8473.

SUPPLEMENTARY INFORMATION: As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency (EPA) by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final

decision allows the underground injection by the INVISTA Orange Plant, of the specific restricted hazardous wastes identified in this exemption reissuance, into Class I hazardous waste injection Wells WDW-191 and WDW-282 until December 31, 2050, unless EPA moves to terminate this exemption under provisions of 40 CFR 148.24. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued August 19, 2020. The public comment period closed on October 5, 2020. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

Dated: March 23, 2023.

Charles W. Maguire,

Director, Water Division, Region 6.

[FR Doc. 2023-06544 Filed 3-29-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2022-0062; FRL-10747-01-OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NSPS for Phosphate Rock Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Phosphate Rock Plants (EPA ICR Number 1078.13, OMB Control Number 2060-0111) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2023. Public comments were previously requested via the **Federal Register** on July 22, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments. **DATES:** Comments may be submitted on or before May 1, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OAR-2022-0062, to EPA online using www.regulations.gov (our preferred method), by email to a-and-r-Docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T,

1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this specific information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Muntasir Ali, Sector Policies and Program Division (D243-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-0833; email address: ali.muntasir@epa.gov.

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through July 22, 2022 during a 60-day comment period (87 FR 43843). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: The New Source Performance Standards (NSPS) for the regulations published at 40 CFR part 60, subpart NN apply to the following existing facilities and new facilities at phosphate rock plants with capacities greater than 4 tons per hour: dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorus production. New facilities include those that commenced construction, modification or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart NN.

In general, all NSPS standards require initial notifications, performance tests,

and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities:

Owners and operators of phosphate rock plants.

Respondent's obligation to respond: Mandatory (40 CFR, part 60, Subpart NN).

Estimated number of respondents: 1 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 120 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$22,400 (per year), which includes \$8,400 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is a decrease in the total estimated respondent burden compared with the ICR currently approved by OMB, which is due to a decrease in the number of sources. This is due to an adjustment to reflect that phosphate rock facilities subject to the NESHAP for Phosphoric Acid Manufacturing (40 CFR part 63, subpart AA), as amended on August 19, 2015, are exempt from any otherwise applicable new source performance standards contained in 40 CFR part 60, subpart T, subpart U, or subpart NN, provided sources have a current operating permit pursuant of title V of the Clean Air Act. Most phosphate rock plants previously included as respondents to 40 CFR part 60, subpart NN are subject to 40 CFR part 63, subpart AA. Only one respondent is now subject to subpart NN. The previous ICR indicated 15 sources were subject to this subpart, which indicates a 94 percent decrease in the number of respondents. The reduced number of respondents also results in a subsequent decrease in the operation and maintenance costs. There are no new sources anticipated, therefore there is no anticipated change in capital costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023-06548 Filed 3-29-23; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 133165]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a new system of records.

SUMMARY: The Federal Communications Commission (FCC or Commission or Agency) proposes to add a new system of records, FCC/WCB-5, USAC Customer Relationship Management (CRM), subject to the *Privacy Act of 1974*, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency. The Universal Service Administrative Company (USAC), under the direction of the Commission and, by delegation, of the Commission's Wireline Competition Bureau (WCB), administers the Universal Service Fund (USF) programs and certain programs funded by Congressional appropriations ("appropriated programs"). This system of records contains information about individuals who are customers, participants, and stakeholders of the programs who submit complaints and requests for assistance to USAC to address issues with their program participation.

DATES: Written comments are due on or before May 1, 2023. This action will become effective on March 30, 2023, except for any new or significantly modified routine uses, which will become effective May 1, 2023.

ADDRESSES: Universal Service Administrative Company (USAC), 700 12th Street NW, Suite 900, Washington, DC 20005. Send comments to Brendan McTaggart, Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554, or to privacy@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Brendan McTaggart, (202) 418-1738, or privacy@fcc.gov.

SUPPLEMENTARY INFORMATION: USAC administers the programs of the USF (including the Lifeline, High Cost, Rural Health Care, and E-Rate programs) and certain appropriated programs including the Affordable Connectivity Program (ACP), Emergency Connectivity Fund Program (ECF), and the COVID-19 Telehealth Program on behalf of the FCC, as set forth in 47 CFR part 54, under the direction of the Commission and, by delegation, of WCB. Under the

Memorandum of Understanding Between the FCC and USAC (Dec. 19, 2018), as amended (Nov. 22, 2021) (FCC/USAC MOU) ¹ USAC is responsible for the effective administration of the programs, including responding to inquiries from program participants and providing timely and relevant data and analysis to inform the Commission in its policy making and oversight of the USF and appropriated programs. USAC has not previously had a unified Customer Relationship Management (CRM) system serving as central ticketing system for service inquiries for all of the programs it administers. The Lifeline customer service center is part of an existing Privacy Act System of Records: FCC/WCB-1, Lifeline Program, 86 FR 11526 (2021). The USAC CRM will handle and process inquiries from individuals, groups, and other entities, for all of the programs administered by USAC. The system allows USAC customer service representatives to access prior related inquiries in order to provide excellent customer service. It includes a portal to allow customers to easily interact with USAC through one channel of communication, maintaining the ability to view case status, create new cases, and review closed cases within the same interface. This system of records includes existing data from the established USF and appropriated programs administered by USAC. The system can also accommodate data from any future programs assigned by the FCC to be administered by USAC. The system allows USAC to retrieve records based on an individual's information within the system. The CRM system will be launched in phases on a program by program basis. Phase I currently includes High Cost, Rural Health Care, and Finance (Contributions) customer support. Phase II is anticipated to incorporate Lifeline and the Affordable Connectivity Program for customer support. Phase III will commence the consumer portal.

SYSTEM NAME AND NUMBER:

FCC/WCB-5, USAC Customer Relationship Management.

SECURITY CLASSIFICATION:

No information in the system is classified.

SYSTEM LOCATIONS:

Universal Service Administrative Company (USAC), 700 12th Street NW,

¹ The FCC and USAC have additional MOUs for the appropriated programs. The COVID-19 Telehealth Program was signed on February 4, 2021, the ECF MOU was signed on March 18, 2021, and the ACP MOU was signed November 16, 2021 and revised March 2, 2022.

Suite 900, Washington, DC 20005; and Wireline Competition Bureau (WCB), Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

SYSTEM MANAGERS:

Address inquiries to the Universal Service Administrative Company (USAC), 700 12th Street NW, Suite 900, Washington, DC 20005; or Wireline Competition Bureau (WCB), 45 L Street NE, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 151–154, 201–205, 214, 403; 47 CFR part 54, subpart H.

PURPOSE OF THE SYSTEM:

This system of records is maintained to provide a unified tool to enable USAC, on behalf of the FCC, to respond to inquiries from consumers, participants, and stakeholders in the USF and appropriated programs; to inform the FCC of concerns regarding the USF and appropriated programs in support of the agency's policymaking and enforcement endeavors or otherwise to evaluate the efficiency and administration of FCC programs and to inform future FCC rulemaking activity; to provide consumers with access to a unified portal to view case status, create new cases, and review closed cases; and to provide USAC staff with access to documents and otherwise improve staff efficiency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in this system include, but are not limited to, individuals who contact USAC with inquiries concerning USF and appropriated programs administered by USAC on behalf of the FCC. These individuals include, but are not limited to, individuals and representatives of individuals who participate in these programs; individuals making inquiries on behalf of program participants and stakeholders; and employees of USAC, USAC's vendors, and the FCC.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system collected by design include first and last name, telephone number, email address, user ID numbers, and service representative names, ID numbers, and the name of the organization associated with the individual. Examples for organization names include but are not limited to carrier and school names. Customers or customer representatives may provide data elements that have not been specifically requested, including date of birth, home address, place of birth, gender, work address, taxpayer ID

numbers, facsimile numbers, Social Security numbers (SSNs), mother's maiden name, information contained in birth, death, or marriage certificates, financial account numbers, employment status, employer identification numbers (EINs), and a driver's licenses or State ID (or foreign country equivalent).

RECORD SOURCE CATEGORIES:

Participants in USF and appropriated programs, participating providers and their registered enrollment representatives, and USAC employees or contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC, as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. Program Management—To USAC employees to conduct official duties associated with the administration of FCC programs or the management, operation, and oversight of the CRM, as directed by the Commission.

2. Third Party Contractors—To an employee of a third-party contractor engaged by USAC or a participating provider, or to a subcontractor engaged by a third-party contractor, engaged by USAC, to, among other things, develop the CRM, respond to inquiries concerning USF and appropriated programs, run call center and email support operations, assist in dispute resolution, and develop, test, and operate the database system and network.

3. Service Providers—To service providers, and their registered representatives, only such information that may be required to help resolve a consumer complaint or dispute.

4. State, Tribal, or Local Governmental Agencies and Other Authorized Governmental Entities—To State, Tribal, or local government agencies and other authorized governmental entities, including public utility commissions, only such information that may be required to help resolve a consumer complaint or dispute.

5. FCC Enforcement Actions—When a record in this system involves an informal complaint filed alleging a violation of FCC rules and regulations by an applicant, licensee, certified or regulated entity, or an unlicensed

person or entity, the complaint may be provided to the alleged violator for a response. Where a complainant, in filing his or her complaint, explicitly requests confidentiality of his or her name from public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission's ability to investigate and/or resolve the complaint.

6. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of that individual.

7. Government-Wide Program Management and Oversight—To the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

8. Law Enforcement and Investigation—To disclose pertinent information to appropriate Federal, State, Tribal, or local agencies, authorities, and officials responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC or USAC becomes aware of an indication of a violation or potential violation of a civil or criminal statute, law, regulation, or order, including but not limited to notifying the Internal Revenue Service (IRS) to investigate income eligibility verification.

9. Litigation—To disclose the records to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the FCC collected the records.

10. Adjudication—To disclose the records in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual

capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

11. **Breach Notification**—To appropriate agencies, entities (including USAC), and persons when: (a) the Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

12. **Assistance to Federal Agencies and Entities**—To another Federal agency or entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

13. **Prevention of Fraud, Waste, and Abuse Disclosure**—To Federal agencies, or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State, Tribal, or local governmental agency), and their employees and agents (including contractors, their agents or employees; employees or contractors of the agents or designated agents); or contractors, their employees or agents with whom the FCC or USAC has a contract, service agreement, cooperative agreement, or computer matching agreement for the purpose of: (1) detection, prevention, and recovery of improper payments; (2) detection and prevention of fraud, waste, and abuse in Federal programs administered by a Federal agency or non-Federal entity; (3) detection of fraud, waste, and abuse by individuals in their operations and programs, but only to the extent that the information shared is necessary and relevant to verify pre-award and prepayment

requirements prior to the release of Federal funds, prevent and recover improper payments for services rendered under programs of the FCC or of those Federal agencies and non-Federal entities to which the FCC or USAC provides information under this routine use.

14. **Contract Services, Grants, or Cooperative Agreements**—To disclose information to the FCC or USAC contractors, grantees, or volunteers who have been engaged to assist the FCC or USAC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The information pertaining to the CRM includes electronic records, files, data, records, and may include audio recordings of calls. Records are maintained in secure, limited access areas. Physical entry by unauthorized persons is restricted through use of locks, passwords, and other security measures. Both USAC and its contractors will jointly manage the electronic data housed at USAC and contractors will have access to the data at their locations.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information in the CRM system of records may be retrieved by various identifiers, including, but not limited to the individual's name, or identification number. USAC employees and contractors information can also be retrieved through identifiers including first or last name, title, email address, and username.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Data from USF programs contained in the CRM system are retained in accordance with the National Archives and Records Administration (NARA) General Records Schedule DAA-0173-2017-0001, and will be destroyed 10 years after the year it was created or when no longer needed for business or audit purposes. NARA has not adopted a schedule for appropriated programs records, and will be retained indefinitely until a NARA schedule is adopted for those programs' records. USAC adheres to National Institute of Standards and Technology (NIST) guidelines for the destruction of records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records, data, and files are maintained in the FCC and the USAC computer network databases, which are protected by the FCC's and USAC's privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal IT privacy standards, including those required by the National Institute of Standard and Technology (NIST) and the Federal Information Security Management System (FISMA). In addition, access to the electronic files is restricted to authorized USAC and contractors' supervisors and staff, to the FCC's supervisors and staff in WCB, and to the IT contractors who maintain these computer databases. Other FCC employees and contractors may be granted access only on a "need-to-know" basis. In addition, data in USAC's network servers which are accessible by USAC's contractors will be routinely backed-up. The servers will be stored in secured environments to protect the data.

The paper documents and files are maintained in file cabinets in USAC and the contractors' office suites. The file cabinets are locked when not in use and at the end of the business day. Access to these files is restricted to authorized USAC and its contractors' staffs.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment of records about themselves should follow the Notification Procedure below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554, or to privacy@fcc.gov. Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to the records (47 CFR Part 0, Subpart E).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Federal Communications Commission.
Marlene Dortch,
Secretary.
[FR Doc. 2023–06507 Filed 3–29–23; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0755 FR ID 134046]

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 (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 30, 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: 3060–0755.

Title: Sections 59.1 through 59.4, Infrastructure Sharing.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 75 respondents; 1,125 responses.

Estimated Time per Response: 1–2 hours.

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. 259 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,025 hours.

Total Annual Cost: No cost.

Needs and Uses: There are three reporting and third party disclosure requirements under section 259 of the Communications Act of 1934, as amended. They are: (1) filing of tariffs, contracts or arrangements; (2) providing information concerning deployment of new services and equipment; and (3) notice upon termination of section 259 agreements. The information collections by the Commission under the requirement are: (1) incumbent local exchange carriers (incumbent LECs) will file for public inspection any tariffs, contracts and agreements for infrastructure sharing with third parties (qualifying carriers); (2) incumbent LECs will provide timely information on planned deployments of new services and equipment to third parties (qualifying carriers); and (3) incumbent LECs will furnish third parties (qualifying carriers) with 60 day notice prior to termination of a section 259 sharing agreement to protect customers from sudden changes in service.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–06556 Filed 3–29–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1237, FR ID 133498]

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 (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 29, 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: 3060–1237.

Title: FCC EEO Informal Complaint and Formal Complaint forms.

Form Numbers: FCC Form-5621, FCC Form-5622.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Federal Government.

Number of Respondents and Responses: 16 respondents; 16 responses.

Estimated Time per Response: 2.5–5 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for these collections is contained in the *Civil Rights Act of 1964* section 7, as amended, 42 U.S.C. 2000e; *Age Discrimination in Employment Act of 1967* (ADEA), 29 U.S.C. 621–634; *Americans with Disabilities Act of 1990* (ADA), as amended, 42 U.S.C. 12101–12213; *Rehabilitation Act of 1973*, as amended, 29 U.S.C. 501 *et seq.*

Total Annual Burden: 53 hours.

Total Annual Cost: \$12,000.

Needs and Uses: FCC employees and related individuals may seek a forum through the Office of Workplace Diversity to resolve, investigate, and issue Final Agency Decisions regarding allegations of discrimination and/or retribution or reprisals by completing FCC Form-5621 and/or FCC Form-5622.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–06555 Filed 3–29–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0652 and OMB 3060–1174; FR ID 133289]

Information Collections 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 May 1, 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 <https://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: 3060–0652.

Title: Section 76.309, Customer Service Obligations; Section 76.1600, Electronic Delivery of Notices; Section 76.1602, Customer Service—General Information, Section 76.1603, Customer Service—Rate and Service Changes and 76.1619, Information and Subscriber Bills.

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: 4,210 respondents; 1,109,440 responses.

Estimated Time per Response: 0.0166 to 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 41,990 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission requires that the various disclosure and notifications contained in this collection as a means of consumer protection to ensure that subscribers and franchising authorities are aware of cable operators’ business practices, current rates, rate changes for programming, service and equipment, and channel line-up changes. Permitting the use of email modernizes the Commission’s rules regarding notices required to be provided by MVPDs.

OMB Control Number: 3060–1174.

Title: Section 73.503, Licensing requirements and service; Section 73.621, Noncommercial educational TV

stations; Section 73.3527, Local public inspection file of noncommercial educational stations.

Form Number: N/A.

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: 2,200 respondents; 33,000 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority which covers these information collections is contained in 47 U.S.C. 151, 154(i), 303, and 399B.

Total Annual Burden: 16,500 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection which are approved under this collection are as follows: Audience disclosure: The information collection requirements contained in 47 CFR 73.503(e)(1) require that a noncommercial educational FM broadcast station that interrupts regular programming to conduct fundraising activities on behalf of third-party non-profit organizations must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising.

The information collection requirements contained in 47 CFR 73.621(f)(1) require that a noncommercial educational TV broadcast station that interrupts regular programming to conduct fundraising activities on behalf of third-party non-profit organizations must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising. The audience disclosure must be aired at the beginning and the end of each fundraising program and at least once during each hour in which the program is on the air.

Retention of information on fundraising activities in local public inspection file: The information collection requirements contained in 47 CFR 73.3527(e)(14) require that each noncommercial educational FM broadcast station and noncommercial educational TV broadcast station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization must place in its local public inspection

file, on a quarterly basis, the following information for each third-party fundraising program or activity: The date, time, and duration of the fundraiser; the type of fundraising activity; the name of the non-profit organization benefitted by the fundraiser; a brief description of the specific cause or project, if any, supported by the fundraiser; and, to the extent that the station participated in tallying or receiving any funds for the non-profit group, an approximation, to the nearest \$10,000, of the total funds raised. The information for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October–December, April 10 for the quarter January–March, etc.).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–06560 Filed 3–29–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Savings and Loan Holding Company Registration Statement (FR LL–10(b); OMB No. 7100–0337).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghribi@frb.gov, (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved

collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Savings and Loan Holding Company Registration Statement.

Collection identifier: FR LL–10(b).

OMB control number: 7100–0337.

Effective Date: The revisions are applicable as of May 1, 2023.

General description of collection: The FR LL–10(b) requests information from registering Savings and Loan Holding Companies (SLHCs) on the financial condition, ownership, operations, management, and intercompany relationships of the SLHC and its subsidiaries. Additionally, respondents must include information concerning the transaction that resulted in the respondent becoming an SLHC, a description of the SLHC's business, and a description of any changes related to the financial condition, ownership, operations, intercompany relationships, and management of the SLHC and its subsidiaries since the registrant's application to become an SLHC was approved. The principal executive or principal financial officer of the registering SLHC must certify that the information contained in the submission has been carefully reviewed and is true, correct, and complete.

Frequency: Event-generated.

Respondents: SLHCs.

Total estimated number of respondents: 7.

Total estimated change in burden hours: 1.

Total estimated annual burden hours: 51.¹

Current actions: On November 4, 2022, the Board published a notice in

¹ More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at <https://www.federalreserve.gov/apps/reportingforms/home/review>. On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR LL–10(b).

the **Federal Register** (87 FR 66699) requesting public comment for 60 days on the extension, with revision, of the FR LL–10(b). The Board proposed to revise the FR LL–10(b) by clearing the deregistration process described in Supervision and Regulation Letter 11–12; adding additional language clarifying that a respondent must retain a copy of the signed form at least three years, unless it ceases to be an SLHC before then; adding additional language on the Board's procedures for requesting confidential treatment, including the relevant regulatory citation; clarifying that the background information requested includes formations of savings associations or SLHCs; clarifying that the requested information includes formations of SLHCs and related subsidiaries; and clarifying that the documentation requirements include formations of savings associations and SLHCs, and that responses should be limited to changes since submitting the SLHC application. The comment period for this notice expired on January 3, 2023. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, March 24, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–06553 Filed 3–29–23; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's

Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 1, 2023.

A. *Federal Reserve Bank of Cleveland* (Bryan S. Huddleston, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to comments.applications@clev.frb.org:

1. *Mercer Bancorp, Inc., Celina, Ohio*; to become a bank holding company by acquiring Mercer Savings Bank, Celina, Ohio, upon the conversion of Mercer Savings Bank from mutual to stock form.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–06633 Filed 3–29–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision the Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks (FR 2225; OMB No. 7100–0216).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork

Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks.

Collection identifier: FR 2225.

OMB control number: 7100–0216.

General description of collection: The FR 2225 is required for foreign banking organizations (FBOs) that wish to, and are eligible to, establish a non-zero net debit cap for their U.S. branches and agencies under the Federal Reserve Policy on Payment System Risk.

Frequency: Annually.

Respondents: FBOs with U.S. branches or agencies.

Total estimated number of respondents: 51.

Total estimated annual burden hours: 51.¹

Current actions: On November 29, 2022, the Board published a notice in the **Federal Register** (87 FR 73307) requesting public comment for 60 days on the extension, without revision, of the FR 2225. The comment period for this notice expired on January 30, 2023. The Board did not receive any comments.

¹ More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at <https://www.federalreserve.gov/apps/reportingforms/home/review>. On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 2225.

Board of Governors of the Federal Reserve System, March 24, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023-06551 Filed 3-29-23; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Reporting and Recordkeeping Requirements Associated with Regulation L (FR L; OMB No. 7100-0378).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Reporting and Recordkeeping Requirements Associated with Regulation L.

Collection identifier: FR L.

OMB control number: 7100-0378.

General description of collection: The Depository Institution Management Interlocks Act (DIMIA) generally prohibits management officials from serving simultaneously with two unaffiliated depository organizations (*i.e.*, depository institutions and depository institution holding companies), but allows for exemptions from the prohibition in certain circumstances. The FR L information collection accounts for the reporting and recordkeeping requirements associated with implementation of DIMIA.

Frequency: Event-generated.

Respondents: State member banks, bank holding companies, and savings and loan holding companies.

Total estimated number of respondents: 4.

Total estimated annual burden hours: 14.¹

Current actions: On November 4, 2022, the Board published a notice in the **Federal Register** (87 FR 66704) requesting public comment for 60 days on the extension, without revision, of the FR L. The comment period for this notice expired on January 3, 2023. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, March 24, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023-06552 Filed 3-29-23; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Ongoing

¹ More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at <https://www.federalreserve.gov/apps/reportingforms/home/review>. On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR L.

Intermittent Survey of Households (FR 3016; OMB No. 7100-0150).

DATES: Comments must be submitted on or before May 30, 2023.

ADDRESSES: You may submit comments, identified by FR 3016, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- *Email:* regs.comments@federalreserve.gov. Include the OMB number or FR number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M-4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork

Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Ongoing Intermittent Survey of Households.

Collection identifier: FR 3016.

OMB control number: 7100-0150.

General description of collection: The Ongoing Intermittent Survey of Households, the FR 3016, is a voluntary survey used to study consumer financial decisions, attitudes, and payment behavior.

Proposed revisions: The Board has a contract with the University of Michigan's Survey Research Center (SRC) to include survey questions on behalf of the Board in an addendum to the SRC's regular monthly Survey of Consumer Attitudes and Expectations. The FR 3016 is the portion of that survey that includes Board questions. The full SRC survey averages approximately 25 to 30 minutes per month per respondent, and the Board proposes to add one to two new Board-developed questions to its portion of the survey. The additional questions are expected to change based on Board requirements and the economic conditions at the time of survey fielding, but can include questions about an individual's opinion on such matters as financing needs, or other aspects of consumer financial behavior. The survey results will help the Board to broaden its monitoring of changes in current financing conditions on household spending and other financial outcomes.

The Board estimates that as a result of the new questions, the monthly average minutes per response will increase from 1.6 to 1.65, or 19.8 minutes annually. This is an increase of 0.05 minutes monthly, or 0.6 minutes annually. Additional burden is also being added to the collection to reflect the pretesting of the new survey component questions with a small number of respondents.

Frequency: Monthly.

Respondents: Individuals.

Total estimated number of respondents: 600.

Total estimated change in burden hours: 39.

Total estimated annual burden hours: 199.¹

¹ More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at <https://www.federalreserve.gov/apps/reportingforms/home/review>.

Board of Governors of the Federal Reserve System, March 24, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023-06550 Filed 3-29-23; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Joint Statement for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (FR 2100; OMB No. 7100-0368).

DATES: Comments must be submitted on or before May 30, 2023.

ADDRESSES: You may submit comments, identified by FR 2100, by any of the following methods:

- Agency website: <https://www.federalreserve.gov/foia/proposedregs.aspx>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- Email: regs.comments@federalreserve.gov. Include the OMB number or FR number in the subject line of the message.

- Fax: (202) 452-3819 or (202) 452-3102.

- Mail: Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M-4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo

identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;
- The accuracy of the Board's estimate of the burden of the proposed

information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Joint Statement for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies.

Collection identifier: FR 2100.

OMB control number: 7100-0368.

General description of collection: The Joint Statement for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies was published jointly in 2015 by the Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, National Credit Union Administration, Consumer Financial Protection Bureau, and Securities and Exchange Commission. Standards in the statement encourage a regulated entity, in a manner reflective of its size and other characteristics, to voluntarily conduct a self-assessment of its diversity policies and practices and to report information pertaining to its self-assessment to the Office of Minority and Women Inclusion of its primary federal financial regulator, as well as to publish information pertaining to its efforts with respect to the standards. The Board has developed a voluntary reporting template entitled "Diversity Self-Assessment Template" for use by institutions regulated by the Board to facilitate the provision of self-assessment information.

Proposed revisions: The Board proposes to revise the FR 2100 by adding a field to the reporting template that identifies institutions and reformatting the reporting template's table identifying workforce numbers. The Board proposes to make these revisions effective August 2023.

Frequency: Annually.

Respondents: All financial institutions for which the Federal Reserve is the primary federal financial regulator.

Total estimated number of respondents: 156.

Total estimated change in burden hours: The estimated annual burden would remain unchanged.

Total estimated annual burden hours: 1,248.¹

Board of Governors of the Federal Reserve System, March 24, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023-06554 Filed 3-29-23; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-10275 and CMS-10062]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

¹ More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at <https://www.federalreserve.gov/apps/reportingforms/home/review>.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 1, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* The Home Health Care CAHPS® Survey (HHCAHPS); *Use:* The national implementation of the Home Health Care CAHPS Survey is designed to collect ongoing data from samples of home health care patients who receive skilled services from Medicare-certified home health agencies. The survey is necessary because it fulfills the goal of transparency with the public about home health patient experiences.

The survey is used by Medicare-certified home health agencies to

improve their internal quality assurance in the care that they provide in home health. The HHCAHPS survey is also used in a Medicare payment program. Medicare-certified home health agencies (HHAs) must contract with CMS-approved survey vendors that conduct the HHCAHPS on behalf of the HHAs to meet their requirements in the Home Health Quality Reporting Program *Form Number:* CMS–10275 (OMB control number: 0938–1066); *Frequency:* Quarterly; *Affected Public:* Individuals and Households; *Number of Respondents:* 1,052,966; *Total Annual Responses:* 1,149,975; *Total Annual Hours:* 420,576. (For policy questions regarding this collection contact Lori Luria at 410–786–6684).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Collection of Diagnostic Data in the Abbreviated RAPS Format from Medicare Advantage Organizations for Risk Adjusted Payments; *Use:* Under section 1894(d) of the Act, CMS must make prospective monthly capitated payments to PACE organizations in the same manner and from the same sources as payments to organizations under section 1853. Section 1894(e)(3)(A)(i) requires in part that PACE organizations collect data and make available to the Secretary reports necessary to monitor the cost, operation, and effectiveness of the PACE program.

CMS makes advance monthly per-enrollee payments to organizations, and is required to risk-adjust the payments based on predicted relative health care costs for each enrollee, as determined by enrollee-specific diagnoses and other factors, such as age. CMS has collected diagnosis data from organizations in two formats: (1) comprehensive data equivalent to Medicare fee-for-service claims data (often referred to as encounter data) and (2) data in an abbreviated format known as RAPS data, named for the Risk Adjustment Processing System (RAPS). The subject of this PRA package is collection of RAPS data. Encounter data collection is addressed in a separate PRA package (OMB 0938–1152).

Risk adjustment allows CMS to pay plans for the health risk of the beneficiaries they enroll, instead of paying an identical average amount for each enrollee Medicare beneficiaries. By risk adjusting plan payments, CMS is able to make appropriate and accurate payments for enrollees with differences in expected costs. Risk adjustment is used to adjust bidding and payment based on the health status and demographic characteristics of an

enrollee. Risk scores measure individual beneficiaries’ relative risk and the risk scores are used to adjust payments for each beneficiary’s expected expenditures. By risk adjusting plan bids, CMS is able to also use standardized bids as base payments to plans. *Form Number:* CMS–10062 (OMB control number: 0938–0878); *Frequency:* Quarterly; *Affected Public:* Private Sector, Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 284; *Total Annual Responses:* 80,235,720; *Total Annual Hours:* 2,674,524. (For policy questions regarding this collection contact Amanda Johnson at 410–786–4161.

Dated: March 24, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–06564 Filed 3–29–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–1030]

Cybersecurity in Medical Devices: Refuse To Accept Policy for Cyber Devices and Related Systems Under Section 524B of the FD&C Act; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance entitled “Cybersecurity in Medical Devices: Refuse to Accept Policy for Cyber Devices and Related Systems Under section 524B of the FD&C Act of the FD&C Act.” FDA generally intends not to issue “refuse to accept” (RTA) decisions for premarket submissions submitted for cyber devices based solely on information required by the new amendments to the FD&C Act for ensuring cybersecurity of devices before October 1, 2023, but instead, work collaboratively with sponsors of such premarket submissions as part of the interactive and/or deficiency review process.

DATES: The announcement of the guidance is published in the **Federal Register** on March 30, 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-2023-D-1030 for "Cybersecurity in Medical Devices: Refuse to Accept Policy for Cyber Devices and Related Systems Under Section 524B of the FD&C Act." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper

submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled "Cybersecurity in Medical Devices Refuse to Accept Policy for Cyber Devices and Related Systems Under Section 524B of the FD&C Act" to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Suzanne Schwartz, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire

Ave., Bldg. 66, Rm. 5410, Silver Spring, MD 20993-0002, 301-796-6937 or Diane Maloney, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240-402-8113.

SUPPLEMENTARY INFORMATION:

I. Background

On December 29, 2022, the Consolidated Appropriations Act, 2023 ("Omnibus") was signed into law. Section 3305 of the Omnibus—"Ensuring Cybersecurity of Medical Devices"—amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding section 524B, Ensuring Cybersecurity of Devices. The Omnibus states that the amendments to the FD&C Act shall take effect 90 days after the enactment of the Consolidated Appropriations Act on March 29, 2023. As provided by the Omnibus, the cybersecurity requirements do not apply to an application or submission submitted to FDA before March 29, 2023.

FDA generally intends not to issue RTA decisions for premarket submissions submitted for cyber devices based solely on information required by section 524B of the FD&C Act before October 1, 2023, but instead, work collaboratively with sponsors of such premarket submissions as part of the interactive and/or deficiency review process. Beginning October 1, 2023, FDA expects that such sponsors will have had sufficient time to prepare premarket submissions that contain information required by section 524B of the FD&C Act, and FDA may RTA premarket submissions that do not.

We are implementing this guidance without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (see section 701(h)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)) and § 10.115 (21 CFR 10.115(g)(2))). We made this determination because it is not feasible to obtain public comment prior to the 90-day statutory timeframe for the effective date of section 524B of the FD&C Act. This provision establishes new cybersecurity requirements for cyber devices, which includes information that a sponsor of a premarket submission for a cyber device must provide in its submission. This guidance communicates the Agency's policy regarding RTA decisions for premarket submissions submitted for such cyber devices, which is important to communicate before the effective date

of the statutory provision, which is March 29, 2023. Although this policy is being implemented immediately without prior comment, FDA will consider all comments received and revise the guidance document as appropriate.

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the current thinking of FDA on "Cybersecurity in Medical Devices: Refuse to Accept Policy for Cyber Devices and Related Systems Under Section 524B of the FD&C Act." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products>. This guidance document is also available at <https://www.regulations.gov>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics>. Persons unable to download an electronic copy of "Cybersecurity in Medical Devices: Premarket Submission Considerations for Cyber Devices and Related Systems Under Section 524B of

the FD&C Act" may send an email request to CDRH-Guidance@fda.hhs.gov to receive an electronic copy of the document. Please use the document number GUI00007021 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
860, subpart D	De Novo classification process	0910–0844
"Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program".	Q-submissions	0910–0756

Dated: March 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–06646 Filed 3–29–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0026]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the

award of the priority review voucher. FDA has determined that DAYBUE (trofinetide), approved March 10, 2023, and manufactured by Acadia Pharmaceuticals, Inc., meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT:

Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394, email: Cathryn.Lee@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that DAYBUE (trofinetide), manufactured by Acadia Pharmaceuticals, Inc., meets the criteria for a priority review voucher. DAYBUE (trofinetide) solution is for the treatment of Rett Syndrome in adults and pediatric patients 2 years of age and older.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to <https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm>. For further information about DAYBUE (trofinetide), go to the "Drugs@FDA" website at <https://www.accessdata.fda.gov/scripts/cder/daf/>.

Dated: March 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–06593 Filed 3–29–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–0266]

Identification of Medicinal Products—Implementation and Use; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for industry entitled “Identification of Medicinal Products—Implementation and Use.” This guidance explains FDA’s position and progress on aligning the Agency’s standards to Identification of Medicinal Products (IDMP) standards, which the Agency supports, to identify and describe marketed medicinal products with the exception of investigational medicinal products, with the goal of harmonizing the standards for the international exchange of medicinal product data. The guidance is intended to assist sponsors, applicants, and registrants who are involved in the regulatory submission of medicinal product data.

DATES: The announcement of the guidance is published in the **Federal Register** on March 30, 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-2023-D-0266 for “Identification of Medicinal Products—Implementation and Use.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the 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; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Ta-Jen Chen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1196, Silver Spring, MD 20993-0002, 301-796-7921, Ta-jen.chen@fda.hhs.gov; or Diane Maloney, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled “Identification of Medicinal Products—Implementation and Use.” We are issuing this guidance consistent with our good guidance practices (GGP) regulation (§ 10.115 (21 CFR 10.115)). We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). We made this determination because the harmonization of global IDMP implementation is a process whereby regulatory recommendations across different countries or regions become aligned over time using international guidance documents, consensus standards, policies, and procedures. This guidance presents a least burdensome policy to advance international harmonization by using the most efficient means to achieve regulatory goals. Although this guidance document is immediately in effect, it remains subject to comment in accordance with FDA’s GGP regulation.

The guidance supports the development and implementation of the International Organization for Standardization (ISO) IDMP standards for substances, terminologies, and other

information for use throughout the global medicinal product development lifecycle. In 2013, FDA established an internal committee to determine the conformance of FDA standards to the ISO IDMP standards. Over several years, the committee analyzed the structure, format, and content of the Unique Ingredient Identifier, Structured Product Labeling Pharmaceutical Dosage Form Terminology, Unified Code for Units of Measure, and National Drug Code to assess their conformance to ISO 11238, ISO 11239, ISO 11240, and ISO 11615, respectively. FDA's internal committee determined that the Agency's standards conform to the ISO IDMP standards for regional use. Topics covered in this guidance include:

- Introduction and scope
- Introduction to the five ISO IDMP standards: ISO 11238 (substance), ISO 11239 (dose form), ISO 11240 (units of measure), ISO 11615 (medicinal product identification), and ISO 11616 (pharmaceutical product identification)
- Benefits of IDMP implementation and use, including drug safety and pharmacovigilance, medicinal product traceability for global supply chain integrity, and regulatory registration and exchange of medicinal product information
- FDA's approach to the IDMP standards
- Phased approach to the global implementation

The guidance represents the current thinking of FDA on "Identification of Medicinal Products—Implementation and Use." 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

FDA tentatively concludes that this guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

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/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: March 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–06587 Filed 3–29–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1393]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Patent Term Restoration; Due Diligence Petitions; Filing, Format, and Content of Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by May 1, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. The OMB control number for this information collection is 0910–0233. The title of this information collection is "Patent Term Restoration; Due Diligence Petitions; Filing, Format, and Content of Petitions." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Patent Term Restoration; Due Diligence Petitions; Filing, Format, and Content of Petitions—21 CFR Part 60

OMB Control Number 0910–0233—Extension

This information collection supports Agency regulations. FDA's patent extension activities are conducted under the authority of section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) and the Generic Animal Drug and Patent Term Restoration Act of 1988 (Pub. L. 100–670) (21 U.S.C. 301, *et seq.*). The regulations are codified in 21 CFR part 60, Patent Term Restoration. New human drug, animal drug, human biological, medical device, food additive, or color additive products regulated by FDA must undergo FDA safety, or safety and effectiveness review before marketing is permitted. If the product is covered by a patent, part of the patent's term may be consumed during this review, which diminishes the value of the patent.

In enacting section 505(j) of the FD&C Act and the Generic Animal Drug and Patent Term Restoration Act of 1988, Congress sought to encourage development of new, safer, and more effective medical and food additive products. It did so by authorizing the U.S. Patent and Trademark Office (USPTO) to extend the patent term by a portion of the time during which FDA's safety and effectiveness review prevented marketing of the product. The length of the patent term extension is generally limited to a maximum of 5 years and is calculated by USPTO based on a statutory formula. When a patent holder submits an application for patent term extension to USPTO, USPTO requests information from FDA, including the length of the regulatory review period for the patented product. If USPTO concludes that the product is eligible for patent term extension, FDA publishes a notice that describes the length of the regulatory review period and the dates used to calculate that period. Interested parties may request, under § 60.24 (21 CFR 60.24), revision of the length of the regulatory review period, or may petition under § 60.30 (21 CFR 60.30) to reduce the regulatory review period by any time where marketing approval was not pursued with "due diligence."

In 21 CFR 60.36(a) *due diligence* is defined as "that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period." As provided in § 60.30(c), a due diligence petition

“shall set forth sufficient facts, including dates if possible, to merit an investigation by FDA of whether the applicant acted with due diligence.” Upon receipt of a due diligence petition, FDA reviews the petition and evaluates whether any change in the regulatory review period is necessary. If so, the corrected regulatory review period is published in the **Federal Register**. A due diligence petitioner not satisfied

with FDA’s decision regarding the petition may request, under § 60.40 (21 CFR 60.40), an informal hearing for reconsideration of the due diligence determination. Petitioners are likely to include persons or organizations having knowledge that FDA’s marketing permission for that product was not actively pursued throughout the regulatory review period. The information collection for which an

extension of approval is being sought is the use of the statutorily created due diligence petition.

In the **Federal Register** of August 10, 2022 (87 FR 48667), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR part 60—patent term restoration	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Revision of regulatory review period determinations; § 60.24	4	1.25	5	100	500
Due diligence petitions; § 60.30	1	1	1	50	50
Due diligence hearings; § 60.40	1	1	1	10	10
Total					560

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall decrease of 34 hours and 11 responses. Since publication of the 60-day notice, we have adjusted our burden estimate to reflect an annualized figure (reducing responses associated with § 60.24 by one-third), which results in a decrease to the currently approved burden. There is also a small adjustment decrease of one response associated with submissions received for revision of the regulatory review period determination under § 60.24 since our last review.

Dated: March 26, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–06573 Filed 3–29–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0964]

GlaxoSmithKline Intellectual Property Development Ltd. England; Announcement of the Revocation of the Biologics License for BLENREP

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the revocation of the biologics license for BLENREP (belantamab mafodotin-blmf) powder for injection. GlaxoSmithKline

Intellectual Property Development Ltd. England (GSK) requested withdrawal (revocation) of the biologics license and has waived its opportunity for a hearing.

DATES: The biologics license application (BLA) is revoked as of February 6, 2023.

FOR FURTHER INFORMATION CONTACT:

Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137, Kimberly.Lehrfeld@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: On August 5, 2020, FDA approved the BLA for BLENREP (belantamab mafodotin-blmf) powder for injection held by GlaxoSmithKline Intellectual Property Development Ltd. England (GSK), c/o GlaxoSmithKline, 1250 South Collegeville Rd., Collegeville, PA 19426, indicated for the treatment of adult patients with relapsed or refractory multiple myeloma who have received at least four prior therapies including an anti-CD38 monoclonal antibody, a proteasome inhibitor, and an immunomodulatory agent, under the Agency’s accelerated approval regulations, 21 CFR part 601, subpart E. On November 2, 2022, FDA and GSK met to discuss the results of the confirmatory study required as a condition of BLENREP’s accelerated approval, entitled “Study of Single Agent Belantamab Mafodotin Versus Pomalidomide Plus Low-dose Dexamethasone (Pom/Dex) in Participants with Relapsed/Refractory Multiple Myeloma (DREAMM–3 trial)” and considerations regarding

withdrawal (revocation) of the biologics license for BLENREP because the confirmatory DREAMM–3 trial did not meet its primary endpoint to demonstrate superior progression-free survival. On November 18, 2022, GSK requested withdrawal (revocation), in writing, of the biologics license for BLENREP (belantamab mafodotin-blmf) powder for injection (BLA 761158) under § 601.5(a) (21 CFR 601.5(a)) and waived its opportunity for a hearing. On February 6, 2023, the Agency issued a letter to GSK revoking the biologics license for BLENREP (belantamab mafodotin-blmf) powder for injection (BLA 761158).

Therefore, under § 601.5(a), the Agency revoked the biologics license for BLENREP (belantamab mafodotin-blmf) powder for injection (BLA 761158), effective as of February 6, 2023, the date of FDA’s letter revoking the biologics license for BLENREP.

Dated: March 20, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–06576 Filed 3–29–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-N-0985]

Joint Meeting of the Psychopharmacologic Drugs Advisory Committee and the Peripheral and Central Nervous System 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 Psychopharmacologic Drugs Advisory Committee and the Peripheral and Central Nervous System Drugs Advisory Committee. The general function of the committees 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 14, 2023, from 9 a.m. to 4 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 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-0985. Please note that late, untimely filed comments will not be considered. The docket will close on April 13, 2023. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 13, 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 committees. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, 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-0985 for "Joint Meeting of the Psychopharmacologic Drugs Advisory Committee and the Peripheral and Central Nervous System 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:

Joyce Frimpong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-7973, email: PDAC@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 committees will discuss supplemental new drug application (sNDA) 205422 s009, efficacy supplement for REXULTI (brexpiprazole) tablets, submitted by Otsuka Pharmaceutical Company, Ltd., and Lundbeck, Inc., for the proposed treatment of agitation associated with Alzheimer's dementia.

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 committees. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before April 3, 2023, will be provided to the committees. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 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 6, 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 7, 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 Joyce Frimpong (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 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-06577 Filed 3-29-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA-2020-E-1278 and FDA-2020-E-1279]

Determination of Regulatory Review Period for Purposes of Patent Extension; M6-C Artificial Cervical Disc

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for M6-C ARTIFICIAL CERVICAL DISC and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by May 30, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for

extension acted with due diligence during the regulatory review period by September 26, 2023. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 30, 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 Nos. FDA-2020-E-1278 and FDA-2020-E-1279 for "Determination of Regulatory

Review Period for Purposes of Patent Extension; M6–C ARTIFICIAL CERVICAL DISC.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device M6–C ARTIFICIAL CERVICAL DISC. M6–C ARTIFICIAL CERVICAL DISC is indicated for reconstruction of the disc following single level discectomy in skeletally mature patients with intractable degenerative cervical radiculopathy with or without spinal cord compression at one level from C3 to C7. Subsequent to this approval, the USPTO received a patent term restoration application for M6–C ARTIFICIAL CERVICAL DISC (U.S. Patent No. 8,377,138) from Spinal Kinetics, Inc., and the USPTO requested FDA’s assistance in determining this patent’s eligibility for patent term restoration. In a letter dated July 14, 2020, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of M6–C ARTIFICIAL CERVICAL DISC represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for M6–C ARTIFICIAL CERVICAL DISC is 4,081 days. Of this time, 3,617 days occurred during the testing phase of the regulatory review period, while 464 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* December 7, 2007. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on May 12, 2010. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on December 7, 2007, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* October 31, 2017. FDA has verified the applicant’s claim that the premarket approval application (PMA) for M6–C ARTIFICIAL CERVICAL DISC (PMA 170036) was initially submitted October 31, 2017.

3. *The date the application was approved:* February 6, 2019. FDA has verified the applicant’s claim that PMA 170036 was approved on February 6, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 715 days or 1,321 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA

investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: March 23, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–06580 Filed 3–29–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Exemption of the Advanced Research Projects Agency for Health (ARPA–H) From Policies and Requirements of the National Institutes of Health (NIH)

AGENCY: Advanced Research Projects Agency for Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Secretary of the U.S. Department of Health and Human Services (HHS) has statutory authority to exempt the Advanced Research Projects Agency for Health (ARPA–H) from certain policies and requirements of the National Institutes of Health (NIH) as necessary and appropriate to ensure ARPA–H can most effectively achieve its statutorily specified goals. Pursuant to such authority, and for the reasons stated herein, the Secretary is giving notice that he intends to exempt ARPA–H from all NIH policies and requirements subject to the limitations and condition stated herein.

FOR FURTHER INFORMATION CONTACT: Thomas Libert, 240–731–3874, tom.libert@arpa-h.gov.

SUPPLEMENTARY INFORMATION: This notice follows 87 FR 32174, published on May 24, 2022. The Consolidated Appropriations Act, 2023 (Public Law 117–328, enacted on December 29, 2022) includes authorizing language for ARPA–H. Notably, section 499A of the Public Health Service Act (PHSA), as added by section 2331(a) of the Consolidated Appropriations Act, 2023, establishes ARPA–H within NIH and provides that the Director, ARPA–H, shall report to the Secretary of HHS.

Subparagraph (A) of section 499A(a)(3) provides that the Secretary

may exempt ARPA–H from NIH policies and requirements that are in effect on the day before the enactment of section 499A as necessary and appropriate to ensure ARPA–H can most effectively achieve its statutorily specified goals, except as otherwise provided for in section 499A and subject to the requirements of subparagraph (B). Subparagraph (B) of section 499A(a)(3) provides that not later than 90 days after the date of enactment of section 499A, the Secretary shall publish a notice in the **Federal Register** describing the specific NIH policies and requirements from which the Secretary intends to exempt ARPA–H, including a rationale for such exemptions.

Pursuant to section 499A(a)(3) of the PHSA, notice is hereby given that I intend to exempt ARPA–H from all policies and requirements of the NIH that were in effect on the day before the enactment of section 499A, that is, on December 28, 2022.

The exemption is necessary and appropriate to ensure ARPA–H can most effectively achieve its statutorily specified goals and consistent with prior actions for the following reasons:

- The mission of ARPA–H is complementary to NIH, but its business model is distinct and separate. To succeed at its mission to realize transformative health solutions, ARPA–H must establish a unique culture and distinct and separate business and operations processes, including its own policies and requirements.

- On April 15, 2022, I transferred ARPA–H to NIH as authorized by title II of division H of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103, enacted on March 15, 2022) and delegated to the Director, NIH, certain authorities for the purpose of carrying out ARPA–H (87 FR 23526). As a condition of the delegation, I specified that NIH may not subject ARPA–H to NIH policies.

- As noted, section 499A of the PHSA establishes ARPA–H within NIH and provides that the Director, ARPA–H, shall report to the Secretary. In the Joint Explanatory Statement (168 Cong. Rec. S8895, 2022), Congress signaled its intent for ARPA–H to establish its own culture, procedures, and policies:

The agreement strongly encourages HHS to collaborate with the Defense Advanced Research Projects Agency (DARPA) to develop the foundational policies, procedures, and staff training for ARPA–H employees. The agreement believes ARPA–H will require a very different culture and mission than NIH's other 27 Institutes and Centers.

ARPA–H shall continue to be subject to all policies and requirements of HHS.

All major policy, programmatic, and operational decisions proposed by ARPA–H shall continue to come to the Secretary for approval.

The exemption is subject to the following condition:

- Where ARPA–H identifies a need to develop a policy or requirement to fulfill its mission, it shall rely upon NIH policies and requirements until such time as ARPA–H develops its own policies and requirements as appropriate.

Xavier Becerra,

Secretary of Health and Human Services.

[FR Doc. 2023–06620 Filed 3–29–23; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.

Date: April 27, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6189, MSC 7804, Bethesda, MD 20892, 301–408–9916, sizemoren@csr.nih.gov.

(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 27, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-06639 Filed 3-29-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Application Process for Clinical Research Training and Medical Education at the Clinical Center and Its Impact on Course and Training Program Enrollment and Effectiveness

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health Clinical Center (CC) 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, contact: Tom Burklow, MD, Office of Clinical Research Training and Medical Education, NIH Clinical Center, National Institutes of Health, 10 Center Drive, Room 1N262, Bethesda, MD 20892-1158, or call non-toll-free number 301-435-8015, or email your request, including your address to: tom.burklow@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:
Application Process for Clinical Research Training and Medical

Education at the NIH Clinical Center and Its Impact on Course and Training Program Enrollment and Effectiveness, 0925-0698, REVISION, Exp., date August 31, 2023, National Institutes of Health Clinical Center (CC), National Institutes of Health (NIH).

Need and Use of Information

Collection: The primary objective of the application process is to allow the Office of Clinical Research Training and Medical Education (OCRTME) at the NIH Clinical Center to evaluate applicants' qualifications to determine applicants' eligibility for training programs managed by the Office. Applicants must provide the required information requested in the respective applications to be considered a candidate for participation. Information submitted by candidates for training programs is reviewed initially by OCRTME administrative staff to establish eligibility for participation. Eligible candidates are then referred to the designated training program director/administrator or training program selection committee for review and decisions regarding acceptance for participation. Upon acceptance, OCRTME will collect required eligibility documents for respective training programs. A secondary objective of the application process is to track enrollment in training programs over time.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours 433.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Clinical Electives Program	Pre Doctoral Students	300	1	20/60	100
Graduate Medical Education	Physicians	100	1	20/60	33
Medical Research Scholars Program	Pre Doctoral Students	200	1	20/60	67
Resident Electives Program	Physicians	100	1	20/60	33
Bioethics Fellowship Program	Pre Doctoral, Post-Doctoral	300	1	20/60	100
OCRTME Onboarding Application	Pre Doctoral Students	300	1	20/60	100
Total .....	.....	.....	1,300	.....	433

Dated: March 21, 2023.

Frederick D. Vorck, Jr.,

Project Clearance Liaison, NIH Clinical Center, National Institutes of Health.

[FR Doc. 2023-06641 Filed 3-29-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****[Docket No. USCG–2022–0702]****Request for Information on Coast Guard Vessel Response Plan and Maritime Oil-Spill Response Plan Advisory Group (MORPAG) Recommendations****AGENCY:** Coast Guard, Department of Homeland Security (DHS).**ACTION:** Request for information.

SUMMARY: The U.S. Coast Guard seeks input from the public on the Maritime Oil-spill Response Plan Advisory Group recommendations for changes to the Coast Guard's Vessel Response Plan program and policies. These recommendations were provided in response to an audit from the U.S. Government Accountability Office. This information will support the Coast Guard's mission in marine environmental protection from oil spills.

DATES: Comments must be received by the Coast Guard on or before June 28, 2023.

ADDRESSES: You may submit comments using the Federal Decision Making Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Lieutenant Commander Adriana Gaenzle, U.S. Coast Guard; telephone 202–372–1226, email Adriana.J.Gaenzle@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Public Participation and Comments**

The Coast Guard views public participation as essential to understanding vessel oil spill response capabilities and improving the Coast Guard's role regarding such review processes. The Coast Guard will consider all information, comments, and material received during the comment period. If you submit a comment, please include the docket number for this request for information, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Methods for Submitting Comments

We encourage you to submit comments through the Federal Decision

Making Portal at www.regulations.gov. To do so, go to www.regulations.gov, type USCG–2022–0702 in the search box and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using www.regulations.gov, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Public comments will be in our online docket at www.regulations.gov and can be viewed by following that website's instructions, provided on its Frequently Asked Questions page. We review all comments received, but we will only post comments that address the topic of this request for information. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

The Coast Guard will not issue a separate response to the comments received. We will carefully consider all comments and may use them to form recommendations to Congress. The Coast Guard may also introduce regulatory changes and update policy related to this topic. If the Coast Guard were to undertake any regulatory or policy changes as a result of comments received, that change would be separately announced in the **Federal Register**.

Personal Information

We accept anonymous comments. Comments we post to www.regulations.gov will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see the Department of Homeland Security's (DHS) eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

II. Abbreviations

APC Alternative Planning Criteria
CFR Code of Federal Regulation
CGHQ Coast Guard Headquarters
CG–MER Coast Guard Office of Marine Environmental Response Policy
CG&MT U.S. House of Representatives Subcommittee on Coast Guard and Maritime Transportation
COTP Captain of the Port
CST U.S. Senate Committee on Commerce, Science, and Transportation
DRAT District Response Advisory Teams
FOSC Federal On Scene Coordinator
GAO U.S. Government Accountability Office
MORPAG Maritime Oil-spill Response Plan Advisory Group
NCC National Command Center
NPC National Planning Criteria
NSFCC National Strike Force Coordination Center

OPA 90 Oil Pollution Act of 1990
OSRO Oil Spill Removal Organization
PAV Preparedness Assessment Verification
POAM Plan of Action and Milestones
QRC Quick Response Card
RFI Request for Information
RRI Response Resource Inventory
SMFF Salvage and Marine Firefighting
VRP Vessel Response Plan

III. Purpose

The Coast Guard is issuing this request for information to solicit information that may help improve Vessel Response Plan (VRP) Program administration. The Maritime Oil-spill Response Plan Advisory Group (MORPAG) has completed its analysis of the VRP program and recommended improvements in the following program areas for consideration: Oil Spill Removal Organization (OSRO) Classification, Equivalence, Enforcing National Planning Criteria (NPC) Compliance, Resource Availability, Alternative Planning Criteria (APC) Administrators, Build-Out, Tools, and Staffing.

The Coast Guard will use the public comments received in response to this request for information to better understand vessel oil spill response capabilities, enhance plan review processes, and improve the VRP program overall.

IV. Background*Coast Guard VRP Program*

The Coast Guard serves as the lead federal agency responsible for preparedness and response to oil discharges and hazardous substance releases in the Coastal Zone. The Coast Guard VRP Program works to ensure that vessels operating in waters of the U.S. comply with all oil spill response, salvage, and marine firefighting regulations, and have plans in place to respond to a potential incident. The requirement to have a VRP applies to tank vessels that carry, or are designed to carry, oil in bulk, and to certain non-tank vessels operating in waters of the U.S.

A variety of entities can be involved in writing VRPs, including vessel owners or operators (known as plan holders) or others they may hire to develop the plan on their behalf. Development of the plans require the use of National Planning Criteria to ensure the availability of response resources for a worst-case discharge event. The VRP includes information about the vessel, (such as its name, country of registry, identification number, call sign, and more), contact information for the vessel's owner or operator, a list of Captain of the Port

(COTP) zones that the vessel intends to operate in, the resources identified to respond to a worst-case discharge in each operating area, and the clear identification of the qualified individual—the person(s) or group who is to be notified in the event of a spill in order to activate the plan.

GAO Audit, VRP Program Feedback, and MORPAG Creation

The Coast Guard Authorization Act of 2018 included a provision for the U.S. Government Accountability Office (GAO) to review the VRP program. During this audit, from March 2019 to September 2020, the U.S. Coast Guard Office of Marine Environmental Response Policy (CG–MER) received feedback and data from operational units and identified the need to improve the evaluation of VRP submissions and the VRP Program overall.

Consequently, CG–MER commenced the process of forming the MORPAG in April of 2020 and established its charter in August of 2020. The MORPAG led the overall effort along with subject matter experts from relevant program staffs and field units. Its membership consisted of the following COTP Zones: Corpus Christi, Guam, Honolulu, Southeast Alaska, and Western Alaska. Furthermore, this membership included program representatives from Coast Guard Atlantic Area, Pacific Area, District 8, District 9, District 14, District 17, the National Strike Force Coordination Center (NSFCC), and the Office of Maritime and International Law (CG–LMI). The MORPAG is composed entirely of Federal employees and is therefore not subject to the Federal Advisory Committee Act. *See 5 U.S.C. App. 2 § 3(2)(c)(i).*

In September 2020, the GAO issued their final report analyzing the Coast Guard's processes for reviewing, evaluating, and approving VRPs. That audit report, GAO–20–554, can be found online at <https://www.gao.gov/assets/720/710034.pdf>.

In response to the Audit Report and fleet-wide feedback to the VRP Program, the MORPAG adopted key program management practices in carrying out its VRP advisory group efforts associated with analyzing incident data involving VRPs to identify potential improvements to its VRP review processes.

The MORPAG Process for Developing Recommendations

In April of 2020, the MORPAG established a phased approach and executed a Plan of Action and Milestones (POAM) with the main goal of providing recommendations for

updating VRP regulations and aligning national policy in order to improve program consistency, VRP effectiveness, and streamlined submission and review processes. The MORPAG also considered recommending guidance to support the expansion of response capability and successful sustainment of APCs in remote areas. This process included study of regulatory language, evaluation of the OSRO classification program, and development of recommendations to align programs and processes that support VRP development and approval, including accurate and consistent evaluation of APCs. The phased approach of the POAM was divided into four phases from April 2020 to December 2022: (1) Alignment to develop, refine, and approve responsibilities for MORPAG; (2) Analysis of regulations, policy, procedures, and guidelines; (3) Development of possible recommendations; and (4) Implementation of possible changes in the VRP program and outreach. During this period, contributing factors that impacted MORPAG's efforts included loss of corporate knowledge from personnel turnover, distance, and time zone differences, competing mission demands, budget constraints to conduct in-person meetings, logistical coordination between multiple operational units, and restrictions during the global COVID–19 pandemic.

MORPAG Outreach

Planning for oil spills and preparing adequate response strategies that meet NPC in remote areas where response resources are scarce is a very complex process that can be confusing without proper guidance. The MORPAG conducted a series of external engagements and outreach with entities from the maritime community through onsite engagement sessions in Alaska, Guam, and Hawaii to provide full transparency of process and intention. This outreach also included a letter from CG–MER with an enclosed audiovisual presentation that was distributed to tribal nations located in Alaska. These engagements were conducted for the sole purpose of providing a status update of MORPAG's progress.

MORPAG Areas of Improvement and Recommendations

(1) *OSRO Classification.* The OSRO classification program was created in response to regulatory requirements from OPA 90. The program is voluntary, and its purpose is to assist the development of response plans for both vessels and facilities. The OSRO

classification is limited in scope relative to planning criteria required for VRP compliance and has been subject to differing interpretations from OSROs and vessel owners or operators. The MORPAG recommends the revision of the current *Guidelines for the U.S. Coast Guard Oil Spill Removal Organization Classification Program* to clarify the differentiation between the OSRO classification criteria and vessel planning criteria. The MORPAG also recommends the review and evaluation of applicable Vessel Response Plan regulations for possible regulatory change.

(2) *Equivalence.* The Coast Guard reviews an Alternative Planning Criteria (APC) by evaluating equivalence to the NPC. The regulations require an APC to contain alternative procedures, methods, or equipment standards, to provide for an equivalent level of planning, response, or pollution mitigation strategies to the NPC. *Equivalence* as presented in the regulations is subjective in nature because it lacks a defined standard, resulting in a challenge for industry when developing alternatives and for the Coast Guard when evaluating alternative measures. The MORPAG recommends the introduction of an Equivalency Board containing members from the Area Committee that could assist with the delineation of standards for equivalency specific to an operating area(s). This concept would standardize the process of submission and evaluation for acceptance of an APC for inclusion in a VRP.

(3) *Enforcing NPC Compliance.* Current regulations allow a vessel owner or operator to submit an APC request when they believe that complying with applicable NPC is inappropriate for the areas in which the vessel intends to operate. Vessel owners or operators are required to identify available resources to the maximum extent practicable to meet their planning requirements. However, there are not sufficient accountability mechanisms in place to verify if a vessel owner or operator has, in fact, identified all available response resources specific to their vessel. The MORPAG recommends the development of processes that could assist a vessel owner or operator in considering all available resources specific to their vessel during the submission of a VRP. The standardization of this process would reduce unintended delays in the acceptance of an APC for inclusion in a VRP and ensure resources are identified to respond to discharges up to the worst-case discharge volume to the maximum extent practicable.

(4) *Resource Availability.* The planning standard requires the identification and assurance of the availability of response resources through “contract or other approved means.” However, it may sometimes be the case that a vessel owner or operator identifies vessels of opportunity (VOO) as a cost-effective possibility to comply with the number of resources required in the VRP. The exact definition of a VOO may vary, but often VOOs are resources identified on an “as available” status with no commitment to respond. This removes an incentive for industry to develop additional response capability. The MORPAG recommends the review of existing policy and regulations that could be revised or clarified to ensure that agreements between primary providers and the entities (*i.e.*, third parties) controlling other resources guarantee availability to the required planning standard and support VRP adherence to regulatory requirements.

(5) *APC Administrators.* CG–MER Policy Letter 01–17 (October 12, 2017) introduced the concept of an APC Administrator (*i.e.*, a third party) to manage the development and administration of an APC on behalf of the vessel owner or operator. Allowing a third party to manage an APC on behalf of a vessel owner or operator becomes complex when the APC Administrator also acts as a service provider. A potential conflict of interest could prevent the Administrator from identifying all available response resources prior to justifying an APC as required. This situation could remove an APC Administrator’s impartiality when identifying and contracting resources owned or controlled by a different resource provider. The MORPAG recommends clarifying the role of the APC Administrator to ensure objectivity in identifying all available response resources, including those not owned or controlled by the APC Administrator, for a vessel owner and operator’s planning requirements at a given operating area.

(6) *Build-Out.* Introduced by CG–MER Policy Letter 01–17, the term “build-out plan” is defined as descriptions of actions an APC submitter plans to take to increase response capability. However, the Coast Guard is limited in its ability to require build-out to enhance response posture in a region. OSROs have demonstrated a trend of investing in response resources, however, they are challenged with the decision as to where to place additional resources to support their business plan. The MORPAG recommends leveraging Area Committees to provide risk

assessments, a list of existing response resource capabilities in the area, and define operating areas based on the results where response resources, including those managed by OSROs, could strategically be placed.

(7) *Tools.* The Coast Guard’s VRP Program manages the review and approval of VRPs that provide response coverage for more than 27,000 vessels operating in the waters of the U.S. Each plan requires application of complex and comprehensive planning criteria and the VRP Program does not have comprehensive guidance and tools that support a consistent, uniform plan submission and review process. The MORPAG recommends the development of planning tools and templates that support APC and VRP submissions and reviews in collaboration with subject matter experts from District Response Advisory Teams (DRAT) and the National Strike Force Coordination Center (NSFCC).

(8) *Staffing.* The 2020 GAO audit of the VRP program (GAO–20–554) identified Coast Guard staffing as a contributing factor limiting the effectiveness of VRP Program. The effective management of APCs and VRPs exceeds current staffing at every level including Coast Guard Sector, District, Area, and Coast Guard Headquarters, as well as support programs such as the NSFCC. The MORPAG recommends an analysis be conducted to evaluate current staffing and program workflow to identify areas where resource proposals could be justified.

Future Coast Guard Actions

The VRP program must refine and clarify regulation and policy to standardize expectations and processes, establish tools, and leverage additional resources to efficiently manage APC evaluations for approval of a VRP to ensure effective response planning. The MORPAG recommends the Coast Guard charter a new group to determine feasibly and develop a course of action to address all areas of improvement in a POAM with an established realistic timeline.

V. Request for Information

The Coast Guard requests relevant comments and information from the public regarding the VRP program and MORPAG’s recommendations. We will use feedback provided to enhance our capabilities in marine environmental protection. We ask that you also keep in mind the Coast Guard’s mission to ensure a safe, secure, and resilient marine transportation system that facilitates commerce and protects national security interests. Commenters

should feel free to answer as many questions as they would like, but also provide specificity, detail, and the logic behind any finding or numerical estimates. Listed below are questions to guide your responses. We want and encourage your feedback.

(1) Build-out provides the means to ultimately reach NPC in areas where response capability is inadequate for vessels. What are tactics the Coast Guard should consider to promote improvement of response capabilities and make it possible for vessels to meet NPC in remote areas?

(2) What can the Coast Guard do to improve the OSRO classification program to support the planning process that vessel owners and operators must follow to achieve VRP approval?

(3) Should the Coast Guard apply performance standards when evaluating the availability of an identified resource in a VRP?

(4) What can the Coast Guard do to ensure that vessel owners and operators avail themselves of all available resources in an attempt to meet NPC before applying for an APC?

(5) The Coast Guard is tasked with reviewing APCs and accepting them if justified. Should Area Committees have jurisdiction or have responsibilities relative to management of APC?

(6) How can Area Committees provide input to the management of an APC and VRP for the area a vessel intends to operate?

(7) Operating areas where APCs are being used are often remote with scarce resources. These areas represent many challenges to response planning capability. Local knowledge would better facilitate establishing the management of APC. Should the Coast Guard consider establishing APC Managers at COTP zones where APCs are being used?

(8) Although vessels operating in U.S. waters but not coming to or from a U.S. port are not required to have an approved VRP, these vessels on innocent passage or transit passage still present the same environmental risks as vessels that are not on such passage. Should the U.S. Congress consider expanding the requirement for vessels on innocent/transit passage to have an approved VRP, or some other requirement to address this issue?

(9) The Coast Guard enforces the requirement for vessels to operate with an approved VRP, should APC Administrators enforce compliance with their accepted APC operating procedures?

(10) How can APC Administrators enforce accepted APC operating procedures?

Dated: March 27, 2023.

J.F. Burdian,

Rear Admiral, U.S. Coast Guard, Assistant
Commandant for Response Policy.

[FR Doc. 2023-06611 Filed 3-29-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-MB-2023-N033; FF07CAFB00/
223/FXFR13350700001; OMB Control
Number 1018-0146]

Agency Information Collection Activities; Submission to the Office of Management and Budget; Depredation and Control Orders

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 May 1,
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](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 “1018-0146” in the subject
line of your comments.

FOR FURTHER INFORMATION CONTACT: To
request additional information about
this ICR, contact Madonna L. Baucum,
Service Information Collection
Clearance Officer, by email at Info_Coll@fws.gov, or by telephone at (703)
358-2503. 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 September 23, 2022, we published
in the **Federal Register** (87 FR 58124) a
notice of our intent to request that OMB
approve this information collection. In
that notice, we solicited comments for
60 days, ending on November 22, 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-HQ-MB-2022-0139) 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 received three comments
in response to that notice. However,
none of the comments addressed the
information collection, so no response is
required.

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: The Migratory Bird Treaty
Act (MBTA; 16 U.S.C. 703 *et seq.*)
implements four treaties concerning
migratory birds signed by the United
States with Canada, Mexico, Japan, and
Russia. These treaties require that we
preserve most U.S. species of birds, and
prohibit activities involving migratory
birds, except as authorized by
regulation. Under the MBTA, it is
unlawful to take, possess, import,
export, transport, sell, purchase,
barter—or offer for sale, purchase, or
barter—migratory birds or their parts,
nests, or eggs, except as authorized by
regulation. This information collection
is associated with our regulations that
implement the MBTA. We collect
information concerning depredation
actions taken to determine the number
of take of birds of each species each year
and whether the control actions are
likely to affect the populations of those
species.

We are not revising any information
collections with this submission.
However, on January 7, 2022, we issued
a final rule (87 FR 876) to renumber,
rename, and rearrange certain subparts
and sections in our regulations at 50
CFR parts 21 and 22. We updated the
citations for the information collections
contained in 50 CFR 21 subpart D in
this submission, to include those in
FWS Form 3-2436, Annual Report.

FWS Form 3-2436, “Depredation and Control Orders—Annual Reporting”

Regulations at 50 CFR 21 establish
depredation orders and impose
reporting and recordkeeping
requirements. All persons or entities
acting under depredation orders must
provide an annual report. The capture
and disposition of all non-target
migratory birds, including endangered,
threatened, or candidate species, must
be reported on Form 3-2436. In addition
to the name, address, phone number,
and email address of each person or
entity operating under the order, we

collect the following information for each target and non-target species taken:

- Species taken,
- Number of birds taken,
- Months and years in which the birds were taken,
- State(s) and county(ies) in which the birds were taken,
- General purpose for which the birds were taken (such as for protection of agriculture, human health and safety, property, or natural resources), and
- Disposition of non-target species (released, sent to rehabilitation facilities, etc.).

We use the information to:

- Identify the person or entity acting under depredation orders;
- Assess the impact to non-target migratory birds or other species;
- Ensure that agencies and individuals operate in accordance with the terms, conditions, and purpose of the orders;
- Inform us as to whether there are areas in which control activities are concentrated and might be conducted more efficiently; and
- Help gauge the effectiveness of the following orders in mitigating order-specific related damages:

§ 21.150—Depredation order for blackbirds, cowbirds, crows, grackles, and magpies;

§ 21.153—Depredation order for horned larks, house finches, and white-crowned sparrows in California;

§ 21.156—Depredation order for depredating California scrub jays and Steller's jays in Washington and Oregon;

§ 21.159—Control order for resident Canada geese at airports and military airfields;

§ 21.162—Depredation order for resident Canada geese nests and eggs;

§ 21.165—Depredation order for resident Canada geese at agricultural facilities;

§ 21.168—Public health control order for resident Canada geese;

§ 21.171—Control order for purple swamphens;

§ 21.174—Control order for Muscovy ducks in the United States;

§ 21.177—Control order for invasive migratory birds in Hawaii;

§ 21.180—Conservation order for light geese; and

§ 21.183—Population control of resident Canada geese.

Recordkeeping Requirements (50 CFR 13.48)

Persons and entities operating under these orders must keep accurate records to complete Form 3–2436. The records of any taking must be legibly written or reproducible in English and maintained for 5 years after the persons or entities

have ceased the activity authorized by this order. Persons or entities who reside or are located in the United States and persons or entities conducting commercial activities in the United States who reside or are located outside the United States must maintain records at a location in the United States where the records are available for inspection.

Endangered, Threatened, and Candidate Species Take Report (50 CFR 21)

If attempts to trap any species under a depredation order injure a bird of a non-target species that is federally listed as endangered or threatened, or that is a candidate for listing, the bird must be delivered to a rehabilitator and must be reported by phone or email to the nearest Service Field Office or Special Agent. Capture and disposition of all non-target migratory birds must also be reported on the annual report.

Required Notifications (50 CFR 21)

• § 21.150—Report take of nontarget federally protected migratory birds to the nearest Service Field Office or Special Agent.

• § 21.159—Airports and military airfields or their agents must obtain authorization from landowners for all management activities conducted outside the airport or military airfield's boundaries.

• § 21.159—Airports and military airfields or their agents must notify Service Ecological Services offices if control activities are proposed in or around occupied habitats.

• § 21.162—Registrants may conduct resident Canada goose nest and egg destruction activities at any time of year. Homeowners' associations and local governments or their agents must obtain landowner consent prior to destroying nests and eggs on private property within the homeowners' association or local government's jurisdiction and comply with all State and local laws and regulations.

• § 21.162—To protect certain species from being adversely affected by management actions, registrants must contact the Service if control activities are proposed in or around occupied habitats to discuss the proposed activity and ensure that implementation will not adversely affect protected species or their habitat.

• § 21.168—Information on birds carrying metal leg bands must be submitted to the Bird Banding Laboratory by means of a toll-free telephone number at 1–800–327–BAND (or 2263) (U.S. Geological Survey OMB Control Number 1028–0082).

• § 21.162—Information on birds carrying metal leg bands must be submitted to the Bird Banding Laboratory by means of a toll-free telephone number at 1–800–327–BAND (or 2263) (USGS OMB Control Number 1028–0082).

• § 21.168—Any State or Tribal employee or designated agent conducting such activities must promptly furnish whatever information is required concerning such activities to any such wildlife officer.

• § 21.168—To protect certain species from being adversely affected by management actions, registrants must contact the Service if control activities are proposed in or around occupied habitats, to discuss the proposed activity and ensure that implementation will not adversely affect protected species or their habitat.

• § 21.171—Authorized individuals operating under this order must immediately report the take of any other species protected under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), the MBTA, or the Bald and Golden Eagle Protection Act to the nearest Service Ecological Services office.

• § 21.174—Authorized individuals operating under this order must immediately report the take of any species protected under the ESA, or any other bird species protected under the MBTA, to the Service Ecological Services office for the State or location in which the take occurred.

• § 21.174—Authorized individuals operating under this order must obtain appropriate landowner permission before conducting activities authorized by this order.

• § 21.177—Authorized personnel must obtain authorization from landowners prior to conducting management activities authorized by this order.

• § 21.177—Authorized individuals operating under this order must immediately report the take of any species protected under the ESA or MBTA within 72 hours of take to the Pacific Region Migratory Bird Permit office in Portland, Oregon.

• § 21.183—Authorized individuals operating under this section must immediately report the take of any species protected under the ESA to the Service.

Conservation Order for Light Geese (50 CFR 21.180)

We published a final environmental impact statement on light goose management in June 2007 and reaffirmed § 21.180 in a final rule published on November 5, 2008 (73 FR 65926). This final rule superseded the

Arctic Tundra Habitat Emergency Conservation Act, which is no longer in effect. These regulations impose require States and Tribes keep annual records of activities carried out under the authority of the conservation order and submit an annual report summarizing activities conducted under the conservation order on or before September 15 of each year. Specifically, information must be collected on:

- The number of persons participating in the conservation order;
- The number of days people participated in the conservation order;
- The number of light geese shot and retrieved under the conservation order; and
- The number of light geese shot but not retrieved.

Conservation Order Participants—Provide Information to States (50 CFR 21.180)

Persons acting under the authority of the conservation order must permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted and must promptly furnish whatever information an officer requires concerning the operation.

Population Control of Resident Canada Geese (50 CFR 20.183)

We use the information required in 50 CFR part 21 to monitor the status of resident Canada goose populations and to assess the impacts that this alternative regulatory strategy may have on resident Canada goose populations.

Except for the nest and egg depredation order, there is no specified form for providing the information. The nest and egg depredation order employs a web-based computer registration system with screens designed to collect the appropriate information.

Annual Report—Airport Control Order (50 CFR 21.159)

Airports and military airfields exercising the privileges granted by this section must:

- Submit information on birds carrying metal leg bands to the Bird Banding Laboratory (§ 21.159(d)(4)). OMB has approved this information collection under OMB Control No. 1028–0082 (Interior; U.S. Geological Survey). We use this information to track geographic movement and survival of individual birds.
- Submit an annual report summarizing activities, including the

date and numbers and location of birds, nests, and eggs taken, by December 31 (§ 21.159(d)(8)). We use this information to monitor the resident Canada goose populations in different areas of the country.

- Immediately report to the appropriate MB office the take of any species protected under the ESA (§ 21.159(d)(8)). This information ensures that the program does not exceed incidental take limits authorized under section 7 of the ESA. Further, to protect certain species from being adversely affected by management actions, registrants must notify Service Ecological Services offices if control activities are proposed in or around occupied habitats.

Nest and Egg Depredation Order (50 CFR 21.162)

Landowners operating under this order must:

- Register with the Service using our web-based registration system (<https://epermits.fws.gov/eRCGR>) (§ 21.162(d)(1)). Registration includes name of landowner, names of designated agents, location of management activities, and contact information. The registration is valid for 1 year; the registrant must renew the registration each year he or she wishes to take nests and eggs. To renew the registration, the registrant must review the information and certify that it is correct. If any information entered during initial registration has changed, the registrant needs to enter only the revised information. We use this information for enforcement purposes and to contact registrants when there are questions regarding their report information. We provided OMB with screen shots of the registration website and a copy of the User Guide as supplementary documents.

- Complete an annual report summarizing the date (month), numbers, and locations of nests and eggs taken by October 31 (§ 21.162(d)(6)). We use this information to monitor the effectiveness of the program and the cumulative effect of the take of nests and eggs on various subpopulations of resident Canada goose populations in different areas of the country. We distribute reports of the numbers of nests and eggs taken, by State and county, annually to the States, Flyway Councils, and Service biologists for their use in determining allowable take by other methods, including hunting seasons. We now also include this information on the registration website.

- Immediately report to the appropriate MB office the take of any

species protected under the ESA (§ 21.162(d)(8)). This information ensures that the program does not exceed incidental take limits authorized under section 7 of the ESA.

Agricultural Depredation Order (50 CFR 21.165)

- Authorized agricultural producers and their employees and agents must submit information on birds carrying metal leg bands to the Bird Banding Laboratory (§ 21.165(d)(5)). This information is used to track geographic movement and survival of individual birds. OMB has approved this information collection under OMB Control No. 1028–0082 (Interior; U.S. Geological Survey).

- Recordkeeping Requirement (Private Sector Only)—Authorized agricultural producers must:

- Keep and maintain a log that indicates the date and number of birds killed and the date and number of nests and eggs taken under this authorization;
- Maintain the log for a period of 3 years (and records for 3 previous years of takings at all times thereafter); and
- Make the log and any related records available to Federal, State, or Tribal wildlife enforcement officers (§ 21.165(d)(8)).

- Reporting Requirement (States and Tribes Only)—States and Tribes must submit by December 31 an annual report summarizing activities, including the numbers of birds, nests, and eggs taken and county where taken (§ 21.165(d)(10)). We use this information to monitor the resident Canada goose populations in different areas of the country.

- Persons operating under this order must immediately report to the appropriate migratory bird office the take of any species protected under the ESA (§ 21.165(d)(12)). This ensures that the program does not exceed incidental take limits authorized under section 7 of the ESA.

Public Health Control Order (50 CFR 21.168)

States and Tribes must:

- Submit information on birds carrying metal leg bands to the Bird Banding Laboratory (§ 21.168(e)(4)). This information is used to track geographic movement and survival of individual birds. OMB has approved this information collection under OMB Control No. 1028–0082.

- Promptly furnish whatever information is required concerning such activities to any Service special agent or refuge officer, State or Tribal wildlife or

deputy wildlife agent, warden, protector, or other wildlife law enforcement officer (§ 21.168(e)(8)).

- Submit by December 31 an annual report summarizing activities, including the numbers and county of birds taken (§ 21.168(e)(9)). We use this information to monitor the resident Canada goose populations in different areas of the country.

- Immediately report to the appropriate MB office the take of any species protected under the ESA (§ 21.168(e)(10)). This ensures that the program does not exceed incidental take limits authorized under section 7 of the ESA.

- Notify Service Ecological Services offices if control activities are proposed in or around occupied habitats (§ 21.168(e)(10)(iv) and (v)).

Population Control of Resident Canada Geese (50 CFR 21.183)

States and Tribes:

- May request approval for the population control program. Requests must include a discussion of the State's or Tribe's efforts to address its injurious situations or a discussion of the reasons why the methods authorized by these regulations are not feasible for dealing with, or applicable to, the injurious situations that require further action. Requests must provide detailed information of the injuries that continue, why the authorized methods have not worked, and why methods not utilized could not resolve the injuries (§ 21.183(d)). This information is

necessary for us to assess whether or not the program should be authorized.

- Must keep annual records of activities carried out under the authority of the program, including (1) the number of individuals participating in the program; (2) the number of days each individual participated in the program; (3) the total number of resident Canada geese shot and retrieved during the program; and (4) the number of resident Canada geese shot but not retrieved (§ 21.183(d)(7)). We use this information, in conjunction with take under other methods and hunting seasons, to determine cumulative impacts on the various goose populations.

- Must submit by June 1 an annual report summarizing activities conducted under the program and an assessment of the continuation of injuries (§ 21.183(d)(7)(iv)). We use this information to determine if we should continue to authorize program activities.

- Must provide by August 1 an annual estimate of the breeding population and distribution of resident Canada geese in their State (§ 21.183(h)). We use this information to monitor the impacts of this program, as well as other authorized activities, on the population and to determine if we should continue to authorize program activities.

Endangered or Threatened Species Take Report (50 CFR 21.165 and 21.183)

Persons operating under § 21.165 must immediately report the take of any

species protected under the ESA to the Service. States may not undertake any actions under § 21.183 if the activities adversely affect other migratory birds or species designated as endangered or threatened under the authority of the ESA. Persons operating under § 21.183 must immediately report the take of any species protected under the ESA to the Service.

Title of Collection: Depredation and Control Orders Under 50 CFR 21, Subpart D.

OMB Control Number: 1018–0146.

Form Number: FWS Form 3–2436.

Type of Review: Renewal without change of a currently approved collection.

Respondents/Affected Public: State and Federal wildlife damage management personnel, farmers, and individuals.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for take reports and annually for annual reports.

Total Estimated Annual Nonhour Burden Cost: \$78,000 (each participating State/Tribe will incur for overhead costs (materials, printing, postage, etc.) associated with mailing surveys to conservation order participants).

Respondent	Activity	Annual number of respondents	Number of submissions each	Total annual responses	Avg. time per response (hours)	Total annual burden hours *
Annual Report—Depredation Order (Form 3–2436)						
Individuals	Reporting	8	1	8	3	24
	Recordkeeping				1	8
Private Sector	Reporting	8	1	8	3	24
	Recordkeeping				1	8
Government	Reporting	11	1	11	3	33
	Recordkeeping				1	11
ePermits Annual Report—Depredation Order (Form 3–2436)						
Individuals	Reporting	8	1	8	2.5	20
	Recordkeeping				1	8
Private Sector	Reporting	8	1	8	2.5	20
	Recordkeeping				1	8
Government	Reporting	11	1	11	2.5	28
	Recordkeeping				1	11
Report Take—Endangered, Threatened, and Candidate Species (§ 21.150, § 21.159–21.177, and § 21.183)						
Individuals	Reporting	1	1	1	.75	1
	Recordkeeping				.25	0
Private Sector	Reporting	3	1	3	.75	2
	Recordkeeping				.25	1
Government	Reporting	3	1	3	.75	2
	Recordkeeping				.25	1

Respondent	Activity	Annual number of respondents	Number of submissions each	Total annual responses	Avg. time per response (hours)	Total annual burden hours *
Conservation Order for Control of Light Geese (§ 21.180)						
Government	Reporting	39	1	39	106	4,134
	Recordkeeping				8	312
Conservation Order Participants—Provide Information to States (§ 21.180)						
Individuals	Reporting	21,538	1	21,538	.13333	2,872
Annual Report—Airport Control Order § 21.159						
Private Sector	Reporting	25	1	25	1	25
	Recordkeeping				.5	13
Government	Reporting	25	1	25	1	25
	Recordkeeping				.5	13
Initial Registration—Nest & Egg Depredation Order (§ 21.162)						
Individuals	Reporting	126	1	126	.5	63
Private Sector	Reporting	674	1	674	.5	337
Government	Reporting	200	1	200	.5	100
Renew Registration—Nest & Egg Depredation Order (§ 21.162)						
Individuals	Reporting	374	1	374	0.25	94
Private Sector	Reporting	2,026	1	2,026	0.25	507
Government	Reporting	600	1	600	0.25	150
Annual Report—Nest & Egg Depredation Order (§ 21.162)						
Individuals	Reporting	500	1	500	.17	85
	Recordkeeping				.08	40
Private Sector	Reporting	2,700	1	2,700	.17	459
	Recordkeeping				.08	216
Government	Reporting	800	1	800	.17	136
	Recordkeeping				.08	64
Recordkeeping—Agricultural Depredation Order (§ 21.165)						
Private Sector	Recordkeeping	600	1	600	0.5	300
Annual Report—Agricultural Depredation Order (§ 21.165)						
Government	Reporting	20	1	20	7	140
	Recordkeeping				1	20
Annual Report—Public Health Order (§ 21.168)						
Government	Reporting	20	1	20	.75	15
	Recordkeeping				.25	5
Annual Report and Recordkeeping—Population Control Approval Request (§ 21.183)						
Government	Reporting	3	1	3	12	36
	Recordkeeping				12	36
Population Control Approval Request—Population and Distribution Estimates (§ 21.183)						
Government	Reporting	3	1	3	160	480
Totals .....	.....	30,334	.....	30,334	.....	10,887

* Rounded to match ROCIS.

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. 2023-06599 Filed 3-29-23; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NRNL-DTS#-35503;
PPWOCRADIO, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before March 18, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by April 14, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National Register Submissions@nps.gov* with the subject line "Public Comment on <property or proposed district name, (County) State>." If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov*, 202-913-3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before March 18, 2023. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Nominations Submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

CALIFORNIA

Ventura County

Maulhardt, Gottfried, Farm, 1251 Gottfried Pl., Oxnard, SG100008891

DISTRICT OF COLUMBIA

District of Columbia

Chevy Chase Savings Bank, 5530 Connecticut Ave. NW, Washington, SG100008870

FLORIDA

Miami-Dade County

Grove Park Historic District, Bounded by NW 17th Ave., FL 836, NW 14th Ct., and NW 7th St., Miami, SG100008869

Duval County

Garden Club of Jacksonville, The, 1005 Riverside Ave., Jacksonville, SG100008872

Pinellas County

Peninsular Fruit Company Building, 10000 Gandy Blvd. North, St. Petersburg, SG100008871

ILLINOIS

Cook County

Laramie State Bank Building, 5200 West Chicago Ave., Chicago, SG100008873
Wilmette Village Center Historic District, 1200 blk. of Washington Ct.; 1100 blks. of Central and Wilmette Aves.; 700 block of 12th St., Wilmette, SG100008874

KANSAS

Wilson County

DeLay, Dorothy, House, 124 North 2nd St., Neodesha, SG100008863

KENTUCKY

Clay County

Manchester Historic District, Portions of Main, Bridge, and Lawyer Sts., Town Sq., Richmond Rd./US 421/White St., Manchester, SG100008883

MISSISSIPPI

Adams County

Proximity, 48 Powlett Rd., Natchez vicinity, SG100008884

MONTANA

Park County

Sacajawea-Miles Parks Historic District, Roughly bounded by West Butte and South 2nd Sts., River Dr., a channel of the lagoon to the north and west, the Yellowstone R., and River Dr., Livingston, SG100008882

NEW YORK

Erie County

Lustron House Westchester Deluxe Model M02 #01310 (Lustron Houses in New York MPS), 3381 North Boston Rd., Eden, MP100008880

Kings County

English Evangelical Lutheran Church of the Reformation, 105 Barbey St., Brooklyn, SG100008887

Oneida County

First Church of Christ, Scientist, 1608 Genesee St., Utica, SG100008877
Beeches Historic District, The 7900 Turin Rd., Rome, SG100008881

OHIO

Warren County

Franklin Historic District, Roughly Bounded by West 1st, South. Main, and Sixth Sts., and the Great Miami R., Franklin, SG100008886

PENNSYLVANIA

Dauphin County

Midland Cemetery (African American Churches and Cemeteries in Pennsylvania, c. 1644–c. 1970 MPS), 206 Kelker St., Swatara Township, MP100008865

Lackawanna County

Scranton Electric Building, 507 Linden St., Scranton, SG100008866

Philadelphia County

S.L. Allen & Company Building, 459 West Glenwood Ave., Philadelphia, SG100008867
Star Carpet Mill (Textile Industry in the Kensington Neighborhood of Philadelphia, Pennsylvania MPS), 1801 North Howard St., Philadelphia, MP100008868

TENNESSEE

Knox County

Emory Place Historic District (Boundary Increase), (Knoxville and Knox County MPS), Portions of North Broadway, North Central, Lamar, King, and North Gay Sts., Emory Pl., East 4th, East 5th. and West 5th Aves., Knoxville, BC100008890

Williamson County

Lewisburg Avenue Historic District (Boundary Increase/Decrease), (Williamson County MRA), Along sections of Lewisburg Ave., South Margin, and Adams Sts., Franklin, BC100008879

WISCONSIN

Washington County

Tischer, Wilhelm Blacksmith Shop, 1125 Western Ave., Jackson, SG100008864
A request to move has been received for the following resource:

NEW YORK

Columbia County

Columbia Turnpike East Tollhouse, NY 23, Hillsdale, MV16000411
An additional documentation has been received for the following resources:

ILLINOIS**Greene County**

Black, Margaret, Farmstead (Additional Documentation), RR 3, Carrollton, AD05000110

TENNESSEE**Knox County**

Emory Place Historic District (Additional Documentation), (Knoxville and Knox County MPS), Portions of North Broadway, North Central, Lamar, King, and North Gay Sts., Emory Pl., East 4th, East 5th, and West 5th Aves., Knoxville, AD94001259

Williamson County

Lewisburg Avenue Historic District (Additional Documentation), (Williamson County MRA), Along sections of Lewisburg Ave., South Margin, and Adams Sts., Franklin, AD88000312

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

MONTANA**Stillwater County**

Meyers Creek Work Center, 101–199 Meyers Creek Rd, Custer Gallatin NF, Nye vicinity, SG100008876

Authority: Section 60.13 of 36 CFR part 60.

Dated: March 22, 2023.

Serena G. Bellew,

Deputy Associate Director, Preservation Assistance Programs, Cultural Resources, Partnerships, and Science.

[FR Doc. 2023–06592 Filed 3–29–23; 8:45 am]

BILLING CODE 4312–52–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23–026]

Name of Information Collection: JSC Form 1830—Report of Medical Examination

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by May 30, 2023.

ADDRESSES: Written comments and recommendations for this information

collection should be sent within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 60-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–3292, or b.edwards-bodmer@nasa.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

Since the mid-1960s, neutral buoyancy has been an invaluable tool for testing procedures, developing hardware, and training astronauts. Neutrally buoyant conditions sufficiently simulate reduced gravity conditions, comparable to the environmental challenges of space. The Neutral Buoyancy Laboratory (NBL) at NASA Johnson Space Center (JSC) provides opportunities for astronauts to practice future on-orbit procedures, such as extravehicular activities (EVA), and to work through simulation exercises to solve problems encountered on-orbit. NASA hires individuals with demonstrated diving experience as NBL Working Divers in teams comprised of four divers; two safety divers, one utility diver, and one cameraman to assist astronauts practice various tasks encountered in space.

NASA allows guest divers, typically non-federal photographers representing the media, opportunities to engage in the NBL diving experience. To participate, guest divers must present a dive physical, completed within one year of the targeted diving opportunity, for review by the NASA Buoyancy Lab Dive Physician.

If the guest diver does not have a current U.S. Navy, Association of Diving Contractors (ADC), or current British standard for commercial diving physical, they are required to complete a medical examination, performed by a certified Diving Medical Examiner. The results of the physical will be documented by on the JSC Form 1830/ Report of Medical Examination for Applicant and presented for review prior to participating in diving activities conducted at the JSC Neutral Buoyancy Lab. The associated cost for guest divers to complete the medical examination will vary, typically based on the guest diver's insurance.

A completed JSC Form 1830/Report of Medical Examination, with test results attached as applicable, must be submitted to enable NASA to validate an individual's physical ability to dive in the NBL at NASA Johnson Space Center. The completed JSC Form 1830 will be protected in accordance with the Privacy Act. Records will be retained in accordance with NASA Records Retention Schedules.

II. Methods of Collection

Paper.

III. Data

Title: JSC Neutral Buoyancy Lab Guest Diver Physical Exam Results.

OMB Number: 2700–0170.

Type of Review: Reinstatement.

Affected Public: Individuals.

Estimated Annual Number of Activities: 30.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 30.

Estimated Time per Response: 1.5 hours.

Estimated Total Annual Burden Hours: 45.

Estimated Total Annual Cost: \$2,250.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,

NASA PRA Clearance Officer.

[FR Doc. 2023–06549 Filed 3–29–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION**Community Development Revolving Loan Fund Access for Credit Unions**

ACTION: Notice of funding opportunity.

Funding Opportunity Title:
Community Development Revolving
Loan Fund (CDRLF) Grants.

*Catalog of Federal Domestic
Assistance (CFDA) Number:* 44.002.

SUMMARY: The National Credit Union Administration (NCUA) is issuing this Notice of Funding Opportunity (NOFO) to announce the availability of technical assistance grants (awards) for low-income designated (LICUs) and Minority Depository Institution (MDIs) credit unions through the CDRLF. The CDRLF provides financial support in the form of loans and technical assistance grants that help credit unions support the communities in which they operate. All grant awards made under this NOFO are subject to funds availability and are at the NCUA's discretion.

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- A. Program Description
- B. Award Information
- C. Eligibility Information
- D. Application and Submission Information
- E. Application Review Information
- F. Federal Award Administration
- G. Federal Awarding Agency
- H. Grant Terms and Conditions

A. Program Description

The purpose of the Community Development Revolving Loan Fund (CDRLF) is to assist LICUs and MDIs in providing basic financial services to their members and to stimulate economic activities in their communities. Through the CDRLF, the NCUA provides financial support in the form of technical assistance grants to eligible credit unions to modernize, build capacity, and extend outreach into underserved communities.

The NCUA will consider requests for various funding initiatives. More detailed information about the purpose of each initiative, amount of funds available, funding priorities, permissible uses of funds, funding limits, deadlines, and other pertinent details will be defined in the Grant Round Guidelines. In addition, the NCUA may periodically publish information regarding the CDRLF in Letters to Credit Unions, press releases, and/or on the agency website, [NCUA.gov](https://www.ncua.gov).

1. Funding Initiatives

The funding initiatives available during 2023 include:

- i. Training;
- ii. Digital Services and Cybersecurity;
- iii. Consumer Financial Protection;
- iv. MDI Capacity Building;
- v. Underserved Outreach;
- vi. Impact Through Innovation; and
- vii. Small Credit Union Partnership.

2. Authority and Regulations

i. *Authority:* 12 U.S.C. 1772c–1, 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786; and Consolidated Appropriations Act, 2023, Public Law 117–328, Div. E, title V.

ii. *Regulations:* The regulation governing the CDRLF is found at 12 CFR part 705. In general, this regulation governs the CDRLF, and sets forth the program requirements. Additional regulations related to the low-income designation are found at 12 CFR 701.34 and 741.204. For the purposes of this NOFO, an “Applicant” is a Participating Credit Union that submits a complete application to the NCUA under the CDRLF. The NCUA encourages Applicants to review the regulations, this NOFO, the Grant Round Guidelines, and other program materials for a complete understanding of the program.¹

B. Award Information

Approximately \$3.5 million in awards will be available through this NOFO. The NCUA reserves the right to: (i) award more or less than the amounts cited above; (ii) fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFO; and (iii) reallocate funds available under this NOFO to other programs, particularly if the NCUA finds that the number of awards made under this NOFO is fewer than projected. General information about the purpose of each funding initiative and the maximum award amount is provided below. Additional initiative information will be detailed in the 2023 Community Development Revolving Loan Fund Grant Round Application Guidelines found on the NCUA's website.

1. Purpose of Funding Initiatives

i. *Training:* The training initiative aims to strengthen credit union management's leadership skills and promote succession planning. Credit unions will be able to use funds to develop a management succession plan, enroll an employee in advanced training courses to enhance leadership skills or operational knowledge of credit unions. To direct grant funds to credit unions with the greatest need for resources, credit unions with assets in excess of \$100 million are not eligible for funding under this initiative.

ii. *Digital Services and Cybersecurity:* This initiative is intended to increase

¹ Some provisions of NCUA's regulation governing the CDRLF, part 705, conflict with the Consolidated Appropriations Act, 2023. The NCUA considers the Consolidated Appropriations Act, 2023 to supersede part 705.

access to safe and secure digital financial products and services. Activities include cybersecurity training for board members and employees, procurement of software and hardware required for cybersecurity upgrades, contracts for external security services, business continuity, development or implementation of an incident response plan, vulnerability scans, or IT auditing and testing. To direct grant funds to credit unions with the greatest need for resources, credit unions with assets in excess of \$250 million are not eligible for funding under this initiative.

iii. *Consumer Financial Protection:* The purpose of this initiative is to ensure credit unions have the resources and expertise to protect credit union members and consumers, raise awareness of potential frauds, and facilitate access to fair and affordable financial services. Many credit unions do not have the expertise to ensure consumer financial protection. Under this initiative, credit unions can obtain the resources, such as consultants, to train staff on consumer financial protection laws and regulations. There is no asset cap for this initiative.

iv. *MDI Capacity Building:* The purpose of funding initiatives for MDIs is to support and help preserve these institutions in furtherance of section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. MDI credit unions are often challenged to fund training for staff and volunteers or invest in technological upgrades, growth, and expansion. The MDI Capacity Building initiative will provide larger awards to MDIs for comprehensive capacity building activities, including activities allowable under other initiatives. This initiative allows MDI credit unions to undertake the many activities required to grow and meet the unique needs of their members. Only credit unions that have self-certified as Minority Depository Institutions as of the date of their grant application are eligible for funding under this initiative.

v. *Underserved Outreach:* The Underserved Outreach initiative will help credit unions implement innovative outreach strategies to help close the wealth gap in underserved communities and for minority, veteran, and immigrant populations through new or expanded outreach efforts, financial education programs, and financial products and services.

vi. *Impact Through Innovation:* The NCUA's priority for the CDRLF is to support the growth of credit unions and make a positive impact on communities that are financially underserved. Providing greater support will require

larger awards and longer performance periods. The Impact Through Innovation initiative will encourage credit unions to meet challenges affecting underserved communities, targeting banking deserts, affordable housing, credit invisibles, and fintechs in new ways. The initiative will be open to credit unions with assets of \$250 million or greater. The Impact Through Innovation initiative will be a multi-year award implemented as a continuation grant. Awardees will have three years to complete their projects, broken into three 12-month performance periods. Credit unions are eligible to receive awards up to \$300,000 throughout the performance period but will only receive obligations up to \$100,000 in 2023. Subsequent obligations are dependent on successful project performance and the availability of future congressional appropriations.

vii. *Small Credit Union Partnership:* Awards will be made to a group of small credit unions, those under \$100 million in assets, to pool resources to help achieve growth objectives, including updating core processors, implementing new banking features, or similar goals. One credit union will serve as the leader of a group of at least four small credit unions. These credit unions should demonstrate a shared need, such as a similar membership or operational need. The Small Credit Union Partnership initiative will be a multi-year award implemented as a continuation grant. Awardees will have three years to complete their projects, broken into three 12-month performance periods. Credit unions are eligible to receive awards up to \$150,000 throughout the performance period but will only receive obligations up to \$50,000 in 2023. Subsequent obligations are dependent on successful project performance and the availability of future congressional appropriations.

2. Maximum Award Amount

The maximum amount for a CDRLF award is determined by the funding initiative. There is no minimum amount for CDRLF awards. The maximum award amount for each funding initiative is provided below.

- i. Training—\$5,000
- ii. Digital Services and Cybersecurity—\$10,000
- iii. Consumer Financial Protection—\$10,000
- iv. MDI Capacity Building—\$50,000
- v. Underserved Outreach—\$50,000

The Impact Through Innovation and Small Credit Union Partnership initiatives will be awarded as continuation grants. Applicants will

apply for funding to cover three years of project costs, up to \$300,000 for the Impact Through Innovation initiative and \$150,000 for the Small Credit Union Partnership Initiative. If approved, the credit union will only be awarded funds to cover the first twelve-month performance period of the project, up to the following amounts:

- vi. Impact Through Innovation—\$100,000
- vii. Small Credit Union Partnership—\$50,000

Upon successful completion of the first performance period, and pending the future availability of congressional funds, the NCUA will award funds to cover costs associated with the second twelve-month performance period of the project. See the 2023 Community Development Revolving Loan Fund Pilot Grant Application Guidelines referenced above for additional details.

C. Eligibility Information

1. Eligible Applicants

This NOFO is open to credit unions that meet the eligibility requirements defined in 12 CFR part 705, except as provided in paragraph (ii) below.

i. *Non-Federally Insured Applicants:* Each Applicant that is a non-federally insured, state-chartered credit union must submit additional application materials. These additional materials are more fully described in 12 CFR 705.7(b)(3) and in the application.

a. Non-federally insured, state-chartered credit unions must agree to be examined by the NCUA. The specific terms and covenants pertaining to this condition will be provided in the award agreement of the Participating Credit Union.

ii. *Minority Depository Institution:* Credit unions not designated as low-income can participate in the CDRLF if designated as a Minority Depository Institution.

2. Employer Identification Number

Each application must include a valid and current Employer Identification Number (EIN) issued by the U.S. Internal Revenue Service (IRS). The NCUA will not consider an application that does not include a valid and current EIN. Such an application will be deemed incomplete and will be declined. Information on how to obtain an EIN may be found on the IRS's website.

3. System for Award Management

All Applicants are required by federal law to have an active registration with the federal government's System for Award Management (SAM) prior to

applying for funding. SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the Federal Government's trading partners in support of the contract awards, grants, and electronic payment processes. *An active SAM account status and unique entity identifier (UEI) number are required to apply for a CDRLF grant. Credit unions receive a UEI upon registration in SAM.* Once registered, credit unions must recertify and maintain an active status annually. There is no charge for the SAM registration and recertification process. SAM users can register or recertify their account by following the instructions for registration. The NCUA will not consider an applicant that does not have an active SAM status.

4. Other Eligibility Requirements

i. *Financial Viability:* Applicants must meet the underwriting standards established by the NCUA, including those pertaining to financial viability, as set forth in the application and defined in 12 CFR 705.7(b) and § 705.7(c).

ii. *Compliance with Past Agreements:* In evaluating funding requests under this NOFO, the NCUA will consider an Applicant's record of compliance with past agreements. The NCUA, in its sole discretion, will determine whether to consider an application from an Applicant with a past record of noncompliance, including any deobligation of funds (removal of unused awards).

a. If an Applicant is in default of a previously executed agreement with the NCUA, the NCUA will not consider an application for funding under this NOFO.

b. If an Applicant is a prior Participating Credit Union under the CDRLF and has unused awards as of the date of application, the NCUA may request a narrative from the Applicant that addresses the reason for its record of noncompliance. The NCUA, in its sole discretion, will determine whether the reason is sufficient to proceed with the review of the application.

D. Application and Submission Information

1. Application

Under this NOFO, all applications must be submitted online in the NCUA's web-based application system, CyberGrants, to be considered. Applications must be submitted online at <https://www.cybergrants.com/ncua/applications>. The application and related documents are also located on the NCUA's website at <https://>

www.ncua.gov/services/Pages/resources-expansion/grants-loans.aspx.

2. Minimum Application Content

A complete application will consist of similar components for each funding initiative. At a minimum, each initiative requires a narrative that describes the Applicant's proposed use of the CDRLF award. The NCUA may waive this requirement for funding initiatives with a defined list of allowable project activities. The NCUA will identify the funding initiatives that do not require a narrative response in the grant round guidelines. Other application contents that are specific to a particular funding initiative will be defined in the grant round guidelines found on the NCUA's website.

3. Submission Dates and Times

The NCUA will accept applications beginning May 1, 2023, at 9:00 a.m. eastern time (ET). Applications must be submitted by June 30, 2023, at 11:59 p.m. ET. Late applications will not be considered.

E. Application Review Information

1. Eligibility and Completeness Review

The NCUA will review each application to determine whether it is complete and that the Applicant meets the eligibility requirements described in the regulations, the Grant Round Guidelines, and in this NOFO. An incomplete application or one that does not meet the eligibility requirements may be declined without further consideration.

2. Evaluation Criteria

Each funding initiative, due to its structure and impact, may have different evaluation criteria assigned. The evaluation criteria for each funding initiative are fully described in the Grant Round Guidelines.

3. Application Review

The purpose of the application review is to determine whether an application satisfies the criteria for the applicable funding initiative. The NCUA will evaluate each application for adherence to the grant round guidelines. The NCUA may contact the Applicant during its review to clarify or confirm information in the application. The Applicant must respond within the time specified by the NCUA or the NCUA, in its sole discretion, may decline the application without further consideration.

4. Scoring and Funding Decision

The NCUA uses a scoring system that establishes a ranking position for each

application. The applications will be ranked according to the scoring criteria set forth for each funding initiative in the Grant Round Guidelines.

F. Federal Award Administration

1. NCUA Award Notice

The NCUA will notify each Applicant of its funding decision by email. In addition, the NCUA will announce the successful applications through a press release that includes a list of the Awardees. Applicants that are approved for funding will also receive instructions on how to proceed with the post-award activities.

2. Administrative and National Policy Requirements

i. *Award Agreement*: The specific terms and conditions will be established in the award agreement each Participating Credit Union must sign prior to formally accepting an award. Each Participating Credit Union under this NOFO must enter into an agreement with the NCUA before the NCUA will disburse the award funds. The agreement includes the terms and conditions of funding, including but not limited to the (i) award amount, (ii) grant award details, (iii) accounting treatment, (iv) signature pages, and (v) reporting requirements.

ii. *Failure to Sign Agreement*: The NCUA, in its sole discretion, may rescind an award if the Applicant fails to sign and return the agreement or any other requested documentation, within the time specified by the NCUA.

3. Payment Process

Awardees will be responsible for the timely completion of all post-award activities. This includes, but it is not limited to, signing the award agreement and completing a payment request for the awarded funds. The payment requirements vary by funding initiative and are detailed in the application and post-award guidelines.

The payment request may require, all or a combination of, the following items: (i) certification of expenses; (ii) project related documentation; (iii) a summary of project accomplishments and outcomes; or (iv) a certification form signed by a credit union official (such as CEO, manager, or Board Chairperson) authorized to request the payment and make the certifications. The NCUA, in its sole discretion, may modify these requirements. Additional payment request requirements will be described in the post-award guidelines.

G. Federal Awarding Agency

1. Methods of Contact

Further information can be found at <https://www.ncua.gov/services/Pages/resources-expansion/grants-loans.aspx>. For questions related to the CDRLF, email the NCUA's Office of Credit Union Resources and Expansion at CUREAPPS@ncua.gov.

2. Information Technology Support

People who have visual or mobility impairments that prevent them from using the NCUA's website should call (703) 518-6610 for guidance (this is not a toll-free number).

H. Grant Terms and Conditions

1. *Every applicant must certify it meets and agrees to the following terms and conditions, prior to submitting an application*:

i. Applicant is a low-income-designated credit union, as defined in section 701.34 of the NCUA's Rules and Regulations and/or a designated Minority Depository Institution credit union.

ii. Applicant shall comply with United States Office of Management and Budget, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

iii. Applicants are required to have an audit conducted if they hold \$750,000 or more in Federal awards during a fiscal year. Applicants that hold less than \$750,000 in Federal awards are exempt from this requirement.

For example, if a credit union uses a \$250,000 loan from the NCUA's CDRLF and a \$500,000 grant from the Community Development Financial Institutions (CDFI) Fund, totaling \$750,000 in Federal awards during the same fiscal year, then the credit union must have an audit conducted.

iv. Applicant is responsible for the efficient and effective administration of the Federal Award through application of sound management practices. Applicant assumes the responsibility for administering Federal Funds in a manner consistent with underlying agreements, program objectives, and the term and conditions of the Federal Award.

v. No employee, contractor, consultant, or vendor has participated substantially for this grant-funded activity, nor otherwise benefited directly or indirectly from the grant, who, to its knowledge (assuming reasonable diligence), has a "covered relationship" with an NCUA employee who presently holds a position that would enable him or her to influence a pending or future grant award, or a

payment of permitted expenses thereunder.

vi. An employee, contractor, consultant, or vendor of the Applicant would have such a "covered relationship" if he or she were either: (1) a member of the household of an NCUA employee who presently holds a position that would enable him or her to influence a pending or future grant award, or a payment thereunder; or (2) a relative of such an NCUA employee with whom he or she has a close personal relationship. 5 CFR 2635.502(b)(1)(ii).

vii. Applicant must disclose in writing to the NCUA any potential conflict of interest in accordance with applicable Federal awarding agency policy.

viii. Per 2 C.F.R. 200.113, Applicant must disclose all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award.

ix. The Applicant conducts its activities such that no person is excluded from participation in, is denied the benefits of, or is subject to discrimination on the basis of race, color, national origin, sex (including pregnancy, sexual orientation, or gender identity), age, or disability in the distribution of services and/or benefits provided under this grant program. The credit union agrees to provide evidence of its compliance as required by the NCUA. Furthermore, credit unions should ensure compliance with Title VI of the Civil Rights Act of 1964.

x. If a credit union enters into commitments for a project before the grant decision is made, the credit union will be obligated to pay project expenses from its own funds should the grant not be approved; if the grant is approved, the credit union may request payment for expenses incurred as of the publication date of the notice of funding opportunity associated with this funding round.

xi. Requests to reallocate or change approved project(s) and/or request an extension to the deadline must be submitted in writing prior to the original deadline and approved by the NCUA prior to Applicant incurring expenses.

xii. The Applicant is aware that the NCUA will correspond with the credit union regarding this application by email, utilizing the email address provided in this application.

xiii. Applicant hereby acknowledges that the NCUA reserves full discretion to deny payment under this grant in the event the NCUA determines the Applicant is, or previously was, either in breach of any condition or limitation

in the grant guidelines or in breach of the 'covered relationship' restriction set forth above.

xiv. Information included in Outcome Summary or Success Stories is considered by the NCUA to be Research Data and is governed by 2 CFR 200.315 and may be made publicly available.

xv. Applicant is aware that any false, fictitious, or fraudulent information or the omission of any material fact may subject Applicant to criminal, civil or administrative penalties for fraud, false statements, false claims, or otherwise. (U.S. Code Title 18, section 1001 and Title 31, sections 3729–3730, and 3801–3812).

xvi. Applicant is aware recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system in accordance with Public Law 115–232, section 889 and 2 CFR 200.216.

xvii. Applicants receiving payment in advance must maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2023–06584 Filed 3–29–23; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Notice of Workshop on Making Data Available for National Spectrum Management

AGENCY: Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation (NSF).

ACTION: Notice of workshop.

SUMMARY: The workshop on Making Data Available for National Spectrum Management will focus on identifying challenges associated with obtaining, disseminating, and using data about spectrum to support policy making, operations, and R&D with applications to spectrum sharing & optimization through improved analysis, modeling & prediction.

DATES: May 3–4, 2023.

ADDRESSES: The workshop on Making Data Available for National Spectrum Management will take place on May 3 and 4, from 8:30 a.m. to 5 p.m. (MT), at the NIST Boulder Labs in Boulder, CO.

Instructions: Due to space limitations, in-person attendance is by invitation only; remote participation will be available via webcast. The agenda, registration link, and webcast information will be available the week of the event at: <https://www.nist.gov/news-events/events/2023/05/wsr-workshop-making-data-available-national-spectrum-management>.

FOR FURTHER INFORMATION CONTACT:

Mallory Hinks at (202) 459–9674 or email wsrd-workshop-2023@nitrd.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Overview. This notice is issued on behalf of the NITRD Wireless Spectrum Research and Development (WSRD) Interagency Working Group (IWG). Agencies of the WSRD IWG are conducting a workshop focused on the topic of making data available for national spectrum management.

Workshop sessions with invited speakers & panelists will discuss:

Data requirements for spectrum
Constraints and policy issues
Spectrum data collection
Spectrum data storage and dissemination

Workshop Objectives. Identify challenges associated with obtaining, disseminating, and using data about spectrum to support policy making, operations, and R&D with applications to spectrum sharing & optimization through improved analysis, modeling & prediction. Discuss ideas for resolution of these challenges through the action of researchers, industry, agencies, regulators, and/or legislators with potential inputs to R&D agency prioritization and the National Spectrum Strategy.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on March 27, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–06640 Filed 3–29–23; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97195; File No. SR–FINRA–2022–032]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to Alternative Display Facility New Entrant

March 24, 2023.

I. Introduction

On December 16, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to add IntelligentCross ATS (“IntelligentCross”) as a new entrant to the Alternative Display Facility (“ADF”) (“Proposal”). The proposed rule change was published for comment in the **Federal Register** on December 27, 2022.³ On February 9, 2023, the Commission extended the time period within which to approve, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 27, 2023.⁴ The Commission has received eight comment letters on the proposed rule change, two of which were received after the Extension.⁵ On February 16, 2023, IntelligentCross submitted a letter responding to the commenters.⁶ On March 13, 2023, FINRA submitted a letter responding to certain commenters.⁷ Under Section 19(b)(3)(C) of the Exchange Act,⁸ the Commission is hereby instituting proceedings to determine whether to approve or disapprove File Number SR–FINRA–2022–032.

II. Description of the Proposed Rule Change

The ADF is a quotation collection and trade reporting facility that provides ADF market participants (*i.e.*, ADF-registered market makers or electronic communications networks)⁹ the ability to post quotations, display orders and report transactions in NMS stocks¹⁰ for submission to the securities information processors (“SIP”) for consolidation and dissemination to vendors and other market participants.¹¹ The ADF is also designed to deliver real-time data to FINRA for regulatory purposes, including enforcement of requirements imposed by Regulation NMS.¹²

In particular, Regulation NMS includes an order protection rule that provides that a trading center “shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks” that do not fall within one of the exceptions set forth in the rule (“Order Protection Rule”).¹³ For quotations to be protected under the rule, they must be, among other things, executable “immediately and automatically” against an incoming immediate-or-cancel (“IOC”) order.¹⁴ In 2016, the Commission interpreted Regulation NMS’s immediacy requirement to allow for “an intentional access delay that is *de minimis*—*i.e.*, a delay so short as to not frustrate the purposes of Rule 611 by impairing fair and efficient access to an exchange’s quotations.”¹⁵ The Commission stated that “[i]n the context of Regulation NMS, the term ‘immediate’ does not preclude all intentional delays regardless of their duration, and such preclusion is not necessary to achieve the objectives of Rule 611. As long as any intentional delay is *de minimis*—*i.e.*, does not impair fair and efficient access to an exchange’s protected quotations—it is consistent with both the text and purpose of Rule 611.”¹⁶ Commission staff guidance has further stated that “consistent with the Commission’s interpretation regarding automated quotation under Rule 600(b)(3) of

Regulation NMS, delays of less than a millisecond are at a *de minimis* level that would not impair fair and efficient access to a quotation, consistent with the goals of Rule 611.”¹⁷

In addition, Rule 610 of Regulation NMS requires that a trading center displaying quotations in an NMS stock through a self-regulatory organization (“SRO”) display-only facility (such as the ADF) “provide a level and cost of access to such quotations that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities in that stock.”¹⁸ Rule 610 also requires that a trading center displaying quotations in an NMS stock through an SRO display-only facility not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations through a member, subscriber, or customer of the trading center.¹⁹ In articulating this standard, the Commission noted that the level and cost of access would “encompass both (1) the policies, procedures, and standards that govern access to quotations of the trading center, and (2) the connectivity through which market participants can obtain access and the cost of such connectivity.”²⁰ The nature and cost of connections for market participants seeking to access an ADF participant’s quotations would need to be substantially equivalent to the nature and cost of connections to SRO trading facilities.²¹

In evaluating whether ADF participants are meeting the access standards under Rule 610, Regulation NMS also requires FINRA to submit a proposed rule change under Section 19(b) of the Exchange Act in order to add a new ADF participant.²² Accordingly, FINRA is proposing to add IntelligentCross as a new ADF Market Participant.²³ IntelligentCross is an NMS stock alternative trading system (“ATS”) operating pursuant to an effective Form ATS–N.²⁴

¹⁷ See Staff Guidance on Automated Quotations under Regulation NMS available at <https://www.sec.gov/divisions/marketreg/automated-quotations-under-regulation-nms.htm>.

¹⁸ 17 CFR 242.610(b)(1).

¹⁹ 17 CFR 242.610(b)(2).

²⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37549 (June 29, 2005) (“NMS Adopting Release”).

²¹ See *id.*

²² See Notice, *supra* note 3, at 79401.

²³ According to FINRA, there have been no ADF Market Participants since the first quarter of 2015. See *id.*

²⁴ See Form ATS–N Filings and Information page on the Commission’s website, at <https://www.sec.gov/divisions/marketreg/form-ats-n-filings.htm>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 96550 (December 20, 2022), 87 FR 79401 (“Notice”).

⁴ See Securities Exchange Act Release No. 96864, 88 FR 9945 (February 15, 2023) (“Extension”).

⁵ All comments received by the Commission on the proposed rule change are available at: <https://www.sec.gov/comments/sr-finra-2022-032/srfinra2022032.htm>.

⁶ See Letter from Ari Burstein, General Counsel, Imperative Execution, dated February 16, 2023 (“IntelligentCross Letter”).

⁷ See Letter from Faisal Sheikh, Assistant General Counsel, FINRA, dated March 13, 2023 (“FINRA Letter”).

⁸ 15 U.S.C. 78s(b)(3)(C).

⁹ See FINRA Rule 6220(a)(3).

¹⁰ See 17 CFR 242.600.

¹¹ See Notice, *supra* note 3, at 79401.

¹² See 17 CFR 242.600.

¹³ See 17 CFR 242.611.

¹⁴ 17 CFR 242.600(b)(6).

¹⁵ Commission Interpretation Regarding Automated Quotations Under Regulation NMS, Securities Exchange Act Release No. 78102 (June 17, 2016), 81 FR 40785, 40792 (June 23, 2016) (“Commission Interpretation of Automated Quotations”).

¹⁶ See *id.* at 40789.

IntelligentCross currently operates three separate limit order books with optional display capability distinguished by different fee structures—the ASPEN fee/fee limit order book (“ASPEN Fee/Fee”), ASPEN maker/taker limit order book, and ASPEN taker/maker limit order book (collectively, “IntelligentCross ASPEN”).²⁵ FINRA states that the ASPEN Fee/Fee book would be the only order book displaying orders on the ADF.²⁶

IntelligentCross provided FINRA with a summary of its policies and procedures regarding access to its quotations in an NMS stock displayed on the ADF, and a summary of its proposed fees for such access.²⁷ Based on IntelligentCross’ representations, FINRA believes that IntelligentCross’ proposed level and cost of access to quotations on the ASPEN Fee/Fee book is substantially equivalent to the level and cost of access to quotations displayed by an SRO trading facility, both in absolute and relative terms.²⁸ FINRA also believes that the quotations displayed on ASPEN Fee/Fee book would meet the definition of an “automated quotation” under Regulation NMS.²⁹

In particular, FINRA states that IntelligentCross only permits registered broker-dealers to be subscribers to IntelligentCross, and subscribers can interact with ASPEN Fee/Fee book using conventional order types.³⁰ The ASPEN Fee/Fee book will accept incoming intermarket sweep orders (“ISOs”) ³¹ once it displays orders on the ADF.³²

²⁵ See Notice, *supra* note 3, at 79402. FINRA states that all three IntelligentCross ASPEN order books act independently of each other (*i.e.*, orders resting in one book do not rest on or interact with orders resting in another book). *See id.* In addition to IntelligentCross ASPEN, FINRA states that IntelligentCross also operates a midpoint book that only accepts non-displayed midpoint orders, which is distinct from and does not interact with the IntelligentCross ASPEN. *See id.* at n.17. All activity on IntelligentCross is identified and reported under the “INCR” market participant identifier (“MPID”). *See id.* at 79402.

²⁶ *See id.* at 79402. FINRA states that the effective date of the Proposal would be the date of the Commission’s approval. *See id.* at 79404.

²⁷ *See id.* at 76341.

²⁸ *See id.* at 79404, n.37.

²⁹ *See id.* at 79403.

³⁰ *See id.* at 79402. FINRA states that ASPEN Fee/Fee book accepts limit orders with optional display instructions, immediate or cancel orders, and pegged orders (which are treated as regular orders with an automated repricing to the national best bid or offer (“NBBO”). *See id.* Only limit orders and primary peg orders (with or without a limit price) are eligible to be displayed on the ASPEN Fee/Fee book, and therefore on the ADF. *See id.*

³¹ 17 CFR 242.600(b)(38).

³² See Notice, *supra* note 3, at 79402.

IntelligentCross has represented to FINRA that the ASPEN Fee/Fee book will be the only

FINRA states that the ASPEN Fee/Fee book establishes a matching schedule³³ using an overnight optimization process based on historical performance measurements from prior days’ matches across all three IntelligentCross ASPEN books.³⁴ The match event time is randomized within the time band throughout the course of the trading day and any order that arrives prior to a match event (and that has not been cancelled, become unmarketable, or repriced)³⁵ is eligible to participate in the next match event for that security.³⁶

IntelligentCross has represented to FINRA that, in the following cases, an incoming order on ASPEN Fee/Fee may not execute against a resting order at match event time when: (i) an existing resting order cancels prior to the next match event; (ii) an incoming order is canceled prior to the next match event; (iii) the NBBO moves between the time an order is received and the next match event takes place, making either the incoming order or the resting order non-marketable; or (iv) the NBBO changed before the next match event and pegged orders were repriced to the new NBBO, making the incoming order or the resting pegged order non-marketable.³⁷

FINRA states that ASPEN Fee/Fee’s matching engine operates near-continuously and that, when a new order arrives in the ASPEN Fee/Fee book, it would participate in the next scheduled match event by interacting with existing orders in the order book within a maximum time capped at 900 microseconds.³⁸

IntelligentCross ASPEN order book that will accept ISOs. *See id.* at 79402, n.22.

³³ *See id.* at 79402. FINRA states that the ASPEN Fee/Fee match schedules are defined by minimum/maximum time bands for each security, and these bands can have a minimum time of 150 microseconds and a maximum time of 900 microseconds. *See id.* For example, on a particular day, the match event band for XYZ stock may have a minimum time of 450 microseconds and a maximum time of 600 microseconds. *See id.*

³⁴ *See id.*

³⁵ *See id.*

³⁶ *See id.* at 79402. According to FINRA, IntelligentCross has represented that both sides of the trade (buyers and sellers) are on equal footing for the next scheduled match event, while maintaining full control of their orders, *i.e.*, both sides can cancel or update their orders at any time prior to the match. *See id.* at n.24. In addition, the ASPEN Fee/Fee book automatically updates its quotations, and all quotation updates, including those due to new or cancelled orders, are immediate. *See id.*

³⁷ *See id.* at 79402, n.23. IntelligentCross has represented to FINRA that non-match events on ASPEN Fee/Fee occur in a minority of cases. *See id.* at 79403. For a more detailed discussion of examples regarding situations where an incoming order may not execute against a resting order at match event time, *see id.* at 79403.

³⁸ *See id.* at 79403. FINRA states that the quotations displayed on ASPEN Fee/Fee are handled on an automated basis and that there is no

FINRA states that for each match event time, ASPEN Fee/Fee retrieves the NBBO and processes all the orders that have arrived and have not been cancelled in price-time priority.³⁹ No subscriber to IntelligentCross (or non-subscriber accessing IntelligentCross through a subscriber) is given any priority through the matching process and the matching process is blind to the identity of the subscriber.⁴⁰ All matches are reported immediately to subscribers and the SIPs via a FINRA trade reporting facility and disseminated on IntelligentCross’ market data feed.⁴¹

FINRA further states that IntelligentCross utilizes a fee/fee pricing model for activity on ASPEN Fee/Fee book where both sides are charged the same fee⁴² for transactions.⁴³ Eligible displayed orders are published via a free market data feed (“IQX market data feed”).⁴⁴ IntelligentCross does not charge connectivity fees to its subscribers.⁴⁵ FINRA states that firms wishing to access liquidity on ASPEN Fee/Fee may connect in a variety of ways.⁴⁶ Firms that are IntelligentCross subscribers can connect to ASPEN Fee/Fee via a Financial Information Exchange (“FIX”) connection.⁴⁷ Such access is available to subscribers through an internet protocol address via communications that are compliant

human discretion in determining any action taken with respect to an order after the order is received. *See id.*

³⁹ *See id.* FINRA states that IntelligentCross uses a combination of SIP and proprietary direct feeds from national securities exchanges to determine the NBBO and protected quotes, and to price executions. *See id.* at 79402, n.27.

⁴⁰ *See id.*

⁴¹ *See id.* IntelligentCross has represented to FINRA that displayed orders from all three IntelligentCross ASPEN order books are available in the IQX market data feed. *See id.* 79402, n.28.

⁴² *See id.* at 79404. FINRA states that the IntelligentCross’ fee schedule is published in the IntelligentCross Form ATS-N and advance notice is provided to its subscribers prior to a pricing change. *See id.*

⁴³ *See id.* at 79404. FINRA states that the base rate charged by IntelligentCross is \$0.0008 per share for each side of a transaction on ASPEN Fee/Fee. *See id.*

⁴⁴ *See id.*

⁴⁵ *See id.* IntelligentCross has represented to FINRA that it is not involved in the installation of cross-connects. *See id.* Further, IntelligentCross does not currently charge connectivity fees to access ASPEN Fee/Fee and has offered to pay for certain of subscribers’ cross-connect fees at NY4. *See id.* IntelligentCross also currently pays for one primary connection and one back-up connection, and any direct subscriber is eligible for this payment. *See id.* IntelligentCross’ network provider and other similar network providers may charge fees relating to connectivity. *See id.* IntelligentCross has represented to FINRA that any such connectivity fees would be substantially equivalent to the costs to connect to any other trading center, such as an exchange. *See id.*

⁴⁶ *See id.*

⁴⁷ *See id.*

with the FIX application programming interface (“API”) provided by IntelligentCross.⁴⁸ IntelligentCross does not accept orders via any other forms of communication (e.g., telephone, email, instant message).⁴⁹ IntelligentCross allows a subscriber to determine its level of connectivity and does not tier or discriminate among subscribers.⁵⁰

Additionally, FINRA states that IntelligentCross has established and maintains policies and procedures related to periodic system capacity reviews and tests to ensure future capacity, as well as policies and procedures to identify potential weaknesses and reduce the risks of system failures and threats to system integrity.⁵¹ FINRA also states that, for purposes of displaying orders through the ADF, IntelligentCross’ policies and procedures require continuous monitoring of ASPEN Fee/Fee’s connections with an SRO display-only facility and, in the event that ASPEN Fee/Fee loses connection with the ADF, IntelligentCross has contingency plans in place, including removing (i.e., “zeroing out”) all quotes previously published by the system to the ADF and notifying its subscribers of such interruption.⁵²

Finally, FINRA states that all members in good standing of an SRO would be eligible to become a subscriber to ASPEN Fee/Fee, and would be subject to eligibility requirements set by IntelligentCross.⁵³

III. Summary of Comments and Responses by IntelligentCross and FINRA

The Commission received seven comment letters opposing the Proposal,⁵⁴ and one comment letter supporting the Proposal.⁵⁵ Commenters

opposing the Proposal generally state the Proposal lacks sufficient detail necessary for the Commission to approve the Proposal and point to several areas of concern.⁵⁶ In particular, commenters raise concerns about whether the Proposal: (1) complies with the requirements of Regulation NMS; (2) should condition Commission’s approval on additional representations by IntelligentCross; (3) provides a sufficient implementation period for the industry to adopt changes from the addition of IntelligentCross to the ADF; and (4) raises concerns about the ADF’s technological infrastructure.⁵⁷

1. Compliance With Regulation NMS

Some commenters raise concern that IntelligentCross’ displayed quotations do not meet the Commission’s definition of “automated quotations” due to the intentional delay built into IntelligentCross’ delayed matching process.⁵⁸ In particular, some commenters state that the Proposal does not demonstrate how the intentionally delayed matching process is *de minimis*.⁵⁹ Two commenters states that the Proposal wrongly assumes that any delay under a millisecond is *de minimis*.⁶⁰ One commenter states that

LLC, dated January 17, 2023. This commenter states that adding IntelligentCross’ displayed liquidity to the public quote would enable market participants to interact with better prices, enhance price discovery, and minimize pricing errors. *See id.*

⁵⁶ *See supra* note 54.

⁵⁷ Some commenters also raise issues that are beyond the scope of the Commission’s consideration of whether the present Proposal is consistent with the Exchange Act. In particular, one commenter states that the Commission should reconsider and withdraw the Commission Interpretation of Automated Quotations. *See Citadel Letter* at 1–4, 8 (stating, among other things, that the Commission Interpretation of Automated Quotations is “inconsistent with the plain text of Regulation NMS and therefore invalid”). Some commenters question the appropriateness of the ADF in today’s market structure, including the need for the ADF given the number of exchanges and active non-display ATS’ in the marketplace. *See Nasdaq Letter* at 2; *Healthy Markets Letter* at 8. One commenter recommends that the Commission should consider “whether the ADF is still needed or should be eliminated entirely.” *Nasdaq Letter* at 1, 3 (stating that the ADF “continues to exist in form only, while serving no productive function”). Finally, some commenters state that approval of the Proposal may undermine the recent Commission proposals to modernize equity market structure. *See Healthy Markets Letter* at 16; *Nasdaq Letter* at 2. One of these commenters also questions how recent reforms to Rule 605 of Regulation NMS would apply to the Proposal, particularly in relation to the single MPID that IntelligentCross uses to identify and report its transaction activity. *See Healthy Markets Letter* at 5, 16.

⁵⁸ *See Citadel Letter* at 1; *SIFMA Letter* at 3; *FIA PTG Letter* at 1–2; *FIA PTG Letter II* at 1–2; *Nasdaq Letter* at 2; *Healthy Markets Letter* at 13.

⁵⁹ *See Citadel Letter* at 1; *FIA PTG Letter* at 1–2; *FIA PTG Letter II* at 1–2; *SIFMA Letter* at 4.

⁶⁰ *See Citadel Letter* at 4; *FIA PTG Letter* at 2. One of these commenters further states that the Proposal

the “novel features” of the Proposal have not been adequately assessed to provide the Commission with sufficient basis to make an affirmative finding that the Proposal is consistent with the Exchange Act.⁶¹ One commenter states that the randomized nature of the matching process “creates significant challenges for best execution for brokers” and prevents “predictable staging of order sending activity by brokers across multiple venues,” resulting in “significant risk of material information leakage and quote fading—leading to materially worse execution quality for investors.”⁶²

Some commenters state that the ability for liquidity providers to cancel displayed ADF orders through IntelligentCross’ functionality at any time raises questions about whether its functionality is consistent with Regulation NMS and prior Commission guidance.⁶³ For example, some commenters state that they are concerned that a resting limit order could be canceled at any time (even after the incoming order is received) prior to the match, including when such incoming orders are routed to IntelligentCross consistent with regulatory obligations under the Order Protection Rule.⁶⁴ One commenter states that the non-match event data stated in the Proposal is a “material”

lacks basic information regarding the intentionally delayed matching process, such as whether it is symmetric or asymmetric and how it operates in practice. *See FIA PTG Letter* at 2.

⁶¹ *See Citadel Letter* at 4. This commenter states that the “required assessment of whether or not an intentional delay is *de minimis* must consider the impact of the intentional delay on fill rates and execution quality and whether it operates to frustrate the purposes of Rule 611 by impairing fair and efficient access to displayed quotations.” *Id.* at 8. The commenter further states that based on the data presented in the Proposal, “nearly 9% of executable transactions do not occur” because of the reasons described by the commenter in its letter, which the commenter states is “certainly not *de minimis*.” *Id.* The commenter also states that granting “protected quotation” status for the first time to a matching process that uses discrete match events would treat the IntelligentCross displayed quote as equivalent to those on other market centers, even though the matching of counterparties and the execution of transactions only occurs after the match event is conducted. *Id.* at 7.

⁶² *See Healthy Markets Letter* at 14. This commenter also states that the delayed randomized match creates challenges regarding the operation of ISOs. *See id.* at 4. *See also Healthy Markets Letter II* at 4; *Citadel Letter* at 6–7 (stating that market participants could have difficulty adopting routing strategies to account for IntelligentCross’ randomized intentional delay).

⁶³ *See SIFMA Letter* at 3–4.

⁶⁴ *See SIFMA Letter* at 3–4; *Citadel Letter* at 4. One of these commenters discusses prior SRO proposals considered by the Commission that raised similar concerns related to asymmetrical “speed bumps” in which one of the orders and/or messages on one side of the market are subject to a delay whereas others are not. *See SIFMA Letter* at 3.

⁴⁸ *See id.*

⁴⁹ *See id.*

⁵⁰ *See id.*

⁵¹ *See id.*

⁵² *See id.*

⁵³ *See id.* at 79405.

⁵⁴ *See Letter* from Tyler Gellach, President and CEO, Healthy Markets Association, dated January 13, 2023 (“Healthy Markets Letter”); *Letter* from Brett Kitt, Associate Vice President & Principal Associate General Counsel, Nasdaq, Inc., dated January 17, 2023 (“Nasdaq Letter”); *Letter* from Joanna Mallers, Secretary, FIA Principal Traders Group, dated January 17, 2023 (“FIA PTG Letter”); *Letter* from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, dated January 23, 2023 (“Citadel Letter”); *Letter* from Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, dated February 8, 2023 (“SIFMA Letter”); *Letter* from Joanna Mallers, Secretary, FIA Principal Traders Group, dated March 8, 2023 (“FIA PTG Letter II”); *Letter* from Tyler Gellach, President and CEO, Healthy Markets Association, dated March 14, 2023 (“Healthy Markets Letter II”).

⁵⁵ *See Letter* from Nataliya Bershova, Head of Execution Research, Sanford C. Bernstein & Co.,

figure that “likely understates expected cancellation rates” if market participants are required to route order flow to IntelligentCross.⁶⁵ Another commenter emphasizes that order posters in ASPEN Fee/Fee book have the ability to immediately cancel their orders, whereas order transmitters seeking to interact with that interest at the NBBO do not have the same ability to cancel their orders due to their regulatory obligation to attempt to access the protected quote.⁶⁶

In its response letter, IntelligentCross states that it disagrees with the characterizations made by commenters of the IntelligentCross matching process.⁶⁷ Specifically, IntelligentCross states that its matching process is “completely symmetric in nature and does not favor a particular side of the trade; there is no differential treatment of certain market participants.”⁶⁸ IntelligentCross states that both sides of the trade “can cancel or update their orders at any time prior to a match” and “must equally wait for the next scheduled match event to occur.”⁶⁹ IntelligentCross also emphasizes that the regulatory obligations attendant to “protected quotations” under Regulation NMS do not provide a guarantee of an execution.⁷⁰ Accordingly, IntelligentCross states that a market participant that routes an order to any market with the intention of matching against a displayed order may not ultimately receive an execution.⁷¹ Moreover, IntelligentCross disagrees with a commenter’s statement that non-match events on IntelligentCross are “material” and states that there is no evidence to the effect that non-match rates would increase if market participants are required to route order flow to IntelligentCross.⁷²

IntelligentCross also disagrees with commenters that express concern regarding the ability for liquidity

providers to cancel their order in IntelligentCross prior to a match event and believe it to be detrimental to the markets and investors.⁷³

IntelligentCross points to its own user experience on the platform, and data specifying that “in January 2023, ASPEN Fee/Fee improved the NBBO over 5.3 million times per day (for orders of round-lot size or larger on arrival).”⁷⁴ Additionally, IntelligentCross states that any “trade-offs” due to the manner of IntelligentCross’ matching process “certainly do not frustrate the purpose of Regulation NMS by impairing fair and efficient access to IntelligentCross’ displayed quotations.”⁷⁵ Moreover, IntelligentCross states that there is no basis for the assumption that there is a significant risk of information leakage and quote fading due to an IntelligentCross protected quote.⁷⁶

In addressing commenter concerns regarding any difficulties for market participants to adapt to an IntelligentCross protected quote, IntelligentCross states it is already widely used by most major broker-dealer and electronic trading firms, and that any market participants should be able to account for the IntelligentCross protected quote without significant or material changes to its technology. Additionally, IntelligentCross points to the “technological capabilities of order routers today” and believes that a market participant “should not have difficulties in configuring their routers to adopt to the IntelligentCross matching process.”⁷⁷

Finally, IntelligentCross states that its matching process is consistent with the Commission Interpretation of Automated Quotations.⁷⁸ IntelligentCross states that, while the Commission did not establish a “bright line de minimis threshold,” the ASPEN Fee/Fee matching engine “operates near-continuously and when a new order arrives in the ASPEN Fee/Fee book, it will participate in the next scheduled match event by interacting with existing orders in the order book within a maximum time capped at 900 microseconds.”⁷⁹

⁷³ *Id.* at 5.

⁷⁴ *Id.*

⁷⁵ *Id.* at 6.

⁷⁶ See *id.* For the proposition that its system is designed to provide for best execution, IntelligentCross states that in the past year, it has grown from 70 basis points of the market on average in January 2022 to 110 basis points during January 2023. See *id.*

⁷⁷ *Id.* at 7.

⁷⁸ See *id.* at 9.

⁷⁹ *Id.*

2. Additional Conditions to Approval of the Proposal

Two commenters raise questions regarding the regulatory process in connection with proposed changes to IntelligentCross’ operations and fees associated with displaying protected quotations on the ADF.⁸⁰ One commenter states that there is currently no process for ongoing operational changes at non-exchange venues with protected quotes and intentional access delays.⁸¹ This commenter states that without the exchange notice and comment process in connection with changes to operations, it seeks additional information on the process for managing such changes at IntelligentCross and the ADF.⁸²

One commenter states that if the Commission chooses to permit any trading center to disseminate quotations using the ADF, it must condition approval with limitations that are consistent with limitations imposed upon other trading venues (*i.e.*, exchanges) whose quotations have protected quotation status.⁸³ In particular, this commenter states that approval of the Proposal should be conditioned upon IntelligentCross: (1) continuing to not charge for market data or connectivity; (2) having fees and rebates (if adopted) that are at or below those charged by exchanges; (3) notifying the Commission and FINRA of all changes related to the ASPEN Fee/Fee book; and (4) describing how any such changes are consistent with the ASPEN Fee/Fee book quotations continuing to be included as protected quotations is consistent with the Exchange Act and protection of investors.⁸⁴ This commenter also states that both the Commission and FINRA should detail how they would “gather, review, analyze, and publish for public consideration” any changes to IntelligentCross’ policies and procedures related to the Proposal, as well as describe how they would

⁸⁰ See Healthy Markets Letter at 2; FIA PTG Letter at 2; FIA PTG Letter II at 2.

⁸¹ See FIA PTG Letter at 2; FIA PTG Letter II at 2–3.

⁸² See FIA PTG Letter at 2; FIA PTG Letter II at 2–3.

⁸³ See Healthy Markets Letter at 2. This commenter states that if the Commission approves the Proposal, “it would be difficult, if not impossible, for the Commission to practically constrain IntelligentCross’ fees and potential limitations for accessing the newly protected quotations.” *Id.* at 9. See also Healthy Markets Letter II.

⁸⁴ See Healthy Markets Letter at 2. This commenter also states that if the Commission approves the Proposal, it should expressly condition the approval on IntelligentCross being compliant with Regulation SCI like other trading centers with protected quotations. See *id.* at 8, n.29.

⁶⁵ See Citadel Letter at 5.

⁶⁶ See SIFMA Letter at 3. This commenter states that areas to explore in addressing its concerns with the Proposal could include “instituting a delay regarding the ability to cancel a posted order that mirrors the delay for incoming orders seeking to interact with that posted order or removing the delay on incoming ISO/IOC orders attempting to access the ADF protected quote.” *Id.* at 4, n.10.

⁶⁷ See IntelligentCross Letter at 3.

⁶⁸ See *id.* at 4.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* IntelligentCross also states that, in the case of ISOs, commenter “concerns are misplaced as once the ISO is sent to a trading center displaying a protected quotation, a broker’s obligations under the Rule 611 have been met.” *Id.* at 5.

⁷² *Id.* at 8. IntelligentCross believes that “it is just as likely that cancellations will decrease” as “the IntelligentCross order book will be in a matchable state more frequently.” *Id.*

intervene to block or disallow any concerning changes in IntelligentCross' policies and procedures related to the ADF.⁸⁵ Overarching this commenter's concerns with the Proposal are that any changes to the ASPEN Fee/Fee rules and operations should be treated the same for regulatory purposes as if they were changes made by an exchange, including that they are put out for notice and public comment, and subject to Commission disapproval.⁸⁶

In its response letter, IntelligentCross points to its current regulatory responsibilities associated with being a registered broker-dealer and an ATS, as well as the Regulation NMS obligations attached to being an ADF Participant.⁸⁷ IntelligentCross also states that, while an ATS is not subject to the same requirements as exchanges, it also does not share the same benefits as exchanges.⁸⁸ However, IntelligentCross states that it does not object to notifying the Commission and FINRA in advance if changes are made to the level and cost of access to the ASPEN Fee/Fee book impacting the display of IntelligentCross' protected quotations on the ADF, or the operation of the ASPEN Fee/Fee book impacting the provision of the protected quote.⁸⁹ IntelligentCross also states that it does not object to an "appropriately structured process" to engage the Commission in evaluating and commenting on such changes.⁹⁰ But IntelligentCross disagrees with the commenter's recommendation to condition IntelligentCross' approval on "continuing to not charge for market data or connectivity" given that it believes such a requirement would not be consistent with the limitations imposed on exchanges.⁹¹

3. Implementation Period

Two commenters suggest that the proposed implementation period for the Proposal is too short given the connectivity arrangements that the industry would need time to establish.⁹² One commenter suggests an implementation period of no less than 120 days following the date of

Commission approval.⁹³ Another commenter suggest a period of no less than 90 days following the date of Commission approval.⁹⁴

In its response letter, IntelligentCross states that it has been working with industry participants to ensure that they have all the information necessary to prepare for the IntelligentCross protected quote.⁹⁵ IntelligentCross also notes that most major broker-dealers and electronic trading firms are already connected to, and trading with, the IntelligentCross ATS.⁹⁶ Moreover, IntelligentCross believes that a reasonable implementation timeframe would be to require that industry participants begin treating IntelligentCross' quotes as a protected quotation no later than 90 days after the date of the Commission's approval order.⁹⁷

4. ADF Technological Infrastructure

One commenter states that the Commission and FINRA should consider whether to "wind down" the ADF due to concerns regarding the latency and technological infrastructure of the ADF.⁹⁸ Specifically, this commenter states that the Proposal does not provide any details of the ADF's systems capabilities and questions whether the "intake, processing, and dissemination systems [are] up to 2023 speed and capacity standards."⁹⁹ This commenter also expresses concern regarding the speed at which the ADF disseminates quotation data compared to the speed at which IntelligentCross' proprietary quotation feed is disseminated to market participants.¹⁰⁰ This commenter states that it is unclear the extent to which "FINRA has attempted to upgrade the system" to address the latency gap.¹⁰¹

In its response letter, FINRA states that it has made technological updates to the ADF infrastructure that make it "well-equipped to support use of the ADF by multiple market participants for quoting and trading purposes."¹⁰²

FINRA also asserts that its recent technological updates to the ADF have significantly reduced the ADF's processing latency times as compared to when the ADF was last operational in 2015.¹⁰³ FINRA also represents that it continues to conduct capacity requirement testing with IntelligentCross and "aim[s] to address any potential areas identified for further improvement prior to IntelligentCross becoming an ADF Participant and sending quotes to the ADF (subject to SEC approval)."¹⁰⁴ Accordingly, FINRA believes that any processing latency for the ADF would generally be in line with exchange processing latencies once IntelligentCross begins quoting on the ADF.¹⁰⁵

IV. Proceedings To Determine Whether To Approve or Disapprove SR-FINRA-2022-032 and Grounds for Disapproval Under Consideration

The Commission hereby institutes proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act¹⁰⁶ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,¹⁰⁷ the Commission is providing notice of the grounds for possible disapproval under consideration. As described above, FINRA has proposed to add IntelligentCross to the ADF. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to,

and quoting functionality were migrated onto a new platform in November 2021 and March 2022, respectively. *See id.*

¹⁰³ *See id.*

¹⁰⁴ *Id.*

¹⁰⁵ *See id.*

¹⁰⁶ 15 U.S.C. 78s(b)(2)(B).

¹⁰⁷ 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Exchange Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the self-regulatory organization consents to the longer period. *See id.*

⁸⁵ *See id.* at 2.

⁸⁶ *See id.* at 17.

⁸⁷ *See* IntelligentCross Letter at 11.

⁸⁸ *See id.*

⁸⁹ *See id.* IntelligentCross also states that it would not object to describing how such changes are consistent with the ASPEN Fee/Fee book quotations continuing to be included as protected quotations, consistent with the Exchange Act. *See id.*

⁹⁰ *See id.*

⁹¹ *See id.* at 11–12. IntelligentCross also states that it currently does not charge for market data and connectivity. *See id.* at 12.

⁹² *See* FIA PTG Letter at 2; FIA PTG Letter II at 3; SIFMA Letter at 4.

⁹³ *See* FIA PTG Letter at 2; FIA PTG Letter II at 3.

⁹⁴ *See* SIFMA Letter at 4–5.

⁹⁵ *See* IntelligentCross Letter at 10.

⁹⁶ *See id.*

⁹⁷ *See id.*

⁹⁸ *See* Healthy Markets Letter at 14–17.

⁹⁹ *See id.* at 14. This commenter asserts that it is "not aware of any public details regarding the details of [the ADF's] operations, including systems specifications and latencies." *Id.*

¹⁰⁰ *See id.* at 7.

¹⁰¹ *See id.* at 8.

¹⁰² *See* FINRA Letter at 3. FINRA states that in 2021 it began a multi-year effort to update the technological infrastructure for several of its facilities, relevant data vendor feeds, and related reference data. *See id.* The ADF's trade reporting

the consistency of the proposal with the Section 15A(b)(6) of the Exchange Act,¹⁰⁸ 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. The Commission believes that there are questions as to whether FINRA has provided sufficient information to demonstrate that the proposal to add IntelligentCross to the ADF is consistent with the Exchange Act and the rules thereunder.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Exchange Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."¹⁰⁹ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,¹¹⁰ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.¹¹¹ The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written view of interested persons concerning whether the proposal is consistent with Section 15A(b)(6) of the Exchange Act, or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any

request for an opportunity to make an oral presentation.¹¹²

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by April 20, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 4, 2023.

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-2022-032 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-2022-032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal

¹¹² Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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-2022-032 should be submitted on or before April 20, 2023. Rebuttal comments should be submitted by May 4, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹³

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-06557 Filed 3-29-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97194; File No. SR-NASDAQ-2022-077]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Withdrawal of Proposed Rule Change To Amend Rule 4702 To Establish New "Contra Midpoint Only" and "Contra Midpoint Only With Post-Only" Order Types

March 24, 2023.

On December 22, 2022, The Nasdaq Stock Market LLC ("Nasdaq") 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 amend Rule 4702 to establish new "Contra Midpoint Only" and "Contra Midpoint Only With Post-Only" order types. The proposed rule change was published for comment in the **Federal Register** on January 11, 2023.³ The Commission received three comment letters on the proposed rule change.⁴ On February 23, 2023, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute

¹¹³ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 96601 (Jan. 5, 2023), 88 FR 1616.

⁴ See Letter from Joseph Saluzzi, Partner, Themis Trading LLC, to Vanessa Countryman, Secretary, Commission, dated February 21, 2023; Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Secretary, Commission, dated February 27, 2023; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Vanessa Countryman, Secretary, Commission, dated March 8, 2023.

⁵ 15 U.S.C. 78s(b)(2).

¹⁰⁸ 15 U.S.C. 78o-3(b)(6).

¹⁰⁹ 17 CFR 201.700(b)(3).

¹¹⁰ See *id.*

¹¹¹ See *id.*

proceedings to determine whether to disapprove the proposed rule change.⁶ On March 22, 2023, Nasdaq withdrew the proposed rule change (SR–NASDAQ–2022–077).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–06558 Filed 3–29–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–195, OMB Control No. 3235–0198]

Submission for OMB Review; Comment Request; Extension: Rule 15c2–5

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for approval of extension of the previously approved collection of information provided for in Rule 15c2–5 (17 CFR 240.15c2–5), under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) (“Exchange Act”).

Rule 15c2–5 prohibits a broker-dealer from arranging or extending certain loans to persons in connection with the offer or sale of securities unless, before any element of the transaction is entered into, the broker-dealer: (1) delivers to the person a written statement containing the exact nature and extent of the person’s obligations under the loan arrangement; the risks and disadvantages of the loan arrangement; and all commissions, discounts, and other remuneration received and to be received in connection with the transaction by the broker-dealer or certain related persons (unless the person receives certain materials from the lender or broker-dealer which contain the required information); and (2) obtains from the person information

on the person’s financial situation and needs, reasonably determines that the transaction is suitable for the person, and retains on file and makes available to the person on request a written statement setting forth the broker-dealer’s basis for determining that the transaction was suitable. The collection of information required by Rule 15c2–5 is necessary to execute the Commission’s mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

The Commission estimates that there are approximately 50 respondents that require an aggregate total of 600 hours to comply with Rule 15c2–5.¹ Each of these approximately 50 registered broker-dealers makes an estimated six annual responses, for an aggregate total of 300 responses per year.² Each response takes approximately two hours to complete. Thus, the total hour burden per year is approximately 600 hours.³ The approximate internal compliance cost per hour is \$66.00 for clerical labor,⁴ resulting in a total internal compliance cost of approximately \$39,600 per year.⁵ These reflect internal labor costs; there are no external labor, capital, or start-up costs.

Although Rule 15c2–5 does not specify a retention period or record-keeping requirement under the rule, broker-dealers are required to preserve the records for a period no less than six years pursuant to Rule 17a–4(c). The information required under Rule 15c2–5 is necessary for broker-dealers to engage in the lending activities prescribed in the Rule. Rule 15c2–5 does not assure confidentiality for the information retained under the rule.⁶

¹ 50 respondents × 6 responses per year × 2 hours per response = 600 hours per year.

² 50 respondents × 6 responses per year = 300 responses per year.

³ 300 responses per year × 2 hours per response = 600 hours per year.

⁴ Cost per hour for a clerk is from SIFMA’s Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year, multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, and adjusted by a factor of 1.0965 to account for inflation.

⁵ 600 hours per year × \$66.00 per hour = \$39,600 per year.

⁶ The records required by Rule 15c2–5 would be available only for examination purposes of the Commission staff, state securities authorities, and the self-regulatory organizations. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552, and the Commission’s rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

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

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent by May 1, 2023 to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: March 27, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–06629 Filed 3–29–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–197, OMB Control No. 3235–0200]

Submission for OMB Review; Comment Request; Extension: Rule 15c3–1

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“PRA”), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for approval of extension of the previously approved collection of information provided for in Rule 15c3–1 (17 CFR 240.15c3–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15c3–1 requires brokers-dealers to have at all times sufficient liquid assets to meet their current liabilities, particularly the claims of customers. The rule facilitates the monitoring of the financial condition of broker-dealers by the Commission and the various self-regulatory organizations. It is estimated that broker-dealer respondents registered with the Commission and subject to the collection of information requirements of Rule 15c3–1 incur an

⁶ See Securities Exchange Act Release No. 96969, 88 FR 13003 (Mar. 1, 2023). The Commission designated April 11, 2023 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ 17 CFR 200.30–3(a)(12).

aggregate annual time burden of approximately 70,137 hours to comply with this rule and an aggregate annual cost burden of approximately \$135,167.

Rule 15c3-1 does not contain record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self-regulatory organization of which the broker-dealer is a member.

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

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent by May 1, 2023 to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: March 27, 2023.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-06628 Filed 3-29-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97197; File No. SR-CboeEDGA-2023-004]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Sponsored Participant Rules

March 24, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 13, 2023, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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 Exchange filed the proposal as a "non-controversial"

proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") proposes to amend Exchange Rules 11.3(a)–(b), to: (1) define the term "Sponsored Access"; and (2) to codify that the agreement required by and between the Sponsoring Member and Sponsored Participant must include a provision that any Sponsored Access relationship must follow the requirements of SEC Rule 15c3-5, the Market Access Rule ("MAR").⁵ The text of the proposed rule change is provided in Exhibit 5.⁶

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/edga/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Exchange Rules 11.3(a)–(b) to: (1) define the term "Sponsored Access"; and (2) to codify that the agreement required by and between the Sponsoring Member and Sponsored Participant must include

a provision that any Sponsored Access relationship must follow the requirements of the MAR.

Sponsored Access Definition

Per current Exchange rules a "Sponsored Participant"⁷ may be a Member⁸ or non-Member of the Exchange whose direct electronic access to the Exchange is authorized by a Sponsoring Member⁹ pursuant to the requirements set forth in Exchange Rule 11.3(b)(1)–(3), "Sponsored Participants". The Exchange proposes to amend Rule 11.3(a) to include the following definition, "Sponsored Access shall mean an arrangement whereby a Member permits its Sponsored Participants to enter orders into the Exchange's System that bypass the Member's trading system and are routed directly to the Exchange, including through a service bureau or other third-party technology provider." The Exchange notes that the proposed definition of Sponsored Access is identical to that adopted¹⁰ by the Nasdaq Stock Market, LLC ("Nasdaq"), General 2 in Section 22, Sponsored Participants, of their General Equity and Options Rules.¹¹ The Exchange believes defining Sponsored Access will provide

⁷ The term "Sponsored Participant" shall mean a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3. See Exchange Rule 1.5(z), definition of "Sponsored Participant".

⁸ The term "Member" shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. See Exchange Rule 1.5(n), definition of "Member".

⁹ The term "Sponsoring Member" shall mean a broker-dealer that has been issued a membership by the Exchange who has been designated by a Sponsored Participant to execute, clear and settle transactions from the System. The Sponsoring Member shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm. See Exchange Rule 1.5(aa), definition of "Sponsoring Member".

¹⁰ See Securities and Exchange Act Release No. 34-76449 (November 27, 2015) 80 FR 73011 (November 23, 2015) (SR-NASDAQ-2015-140) (Notice of Filing and Immediate Effectiveness of the Proposed Rule Change Relating to Sponsored Access) ("Sponsored Access shall mean an arrangement whereby a member permits its customers to enter orders into the Exchange's System that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third party technology provider.")

¹¹ See General Equity and Options Rule, General 2: General Provisions, Section 22(a), available at: <https://listingcenter.nasdaq.com/rulebook/Nasdaq/rules>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 17 CFR 240.15c3-5—Risk management controls for brokers or dealers with market access.

⁶ The Exchange proposes to implement the proposed changes to Rule 11.3(a)–(b)(1)–(3) on a date that will be announced via Cboe Trade Desk, notifying both existing and prospective Sponsoring Members and Sponsored Participants, of the new rule language and required contractual provisions.

Sponsoring Members with greater clarity in understanding which types of market access relationships are subject to Exchange Rule 11.3(a)–(b),¹² and what obligations Sponsoring Members and Sponsored Participants must satisfy when establishing a Sponsored Access relationship.

Market Access Rule

The Exchange seeks to codify that the agreement currently required under Exchange Rule 11.3(b)(2), by and between the Sponsoring Member and Sponsored Participant, must include a provision that any Sponsored Access relationship must follow the requirements of the MAR. While Sponsoring Members have existing obligations under the MAR because they are providing market access to their Sponsored Participants, the Exchange believes the proposed amendment will help to reinforce such obligations. Sponsored Participants will now be required to contractually agree with their Sponsoring Members to follow the requirements of the MAR.

The Exchange believes that the proposed addition of 11.3(b)(2)(f) will reinforce to Sponsoring Members that Sponsored Access relationships must comply with the SEC's MAR, as well as Exchange rules regarding the provision of market access. As noted above, such relationships generally include where a broker-dealer allows its customer to use the broker-dealer's market participant

identifier ("MPID") or other mechanism or mnemonic to enter orders into the Exchange's System that bypass the Sponsoring Member's order handling system and are electronically routed directly to the Exchange by the Sponsored Participant, including through a service bureau or other third-party technology provider.

The Exchange notes further that the proposed addition of 11.3(b)(2)(f) is non-substantive in nature for Sponsoring Members because as broker-dealers providing market access, Sponsoring Members are already required to comply with the MAR, as well as with existing Exchange Rules regarding market access. Indeed, per the Exchange's current Sponsored Participant rules the Sponsoring Member is already responsible for all its Sponsored Participant's activity on the Exchange¹³ and is required to comply with the Exchange's Certificate of Incorporation, By-Laws, Rules, and procedures.¹⁴ This includes compliance with Rule 2.2, which requires, among other things, compliance with the Act and the regulations thereunder, including the MAR.

The proposed addition of Rule 11.3(b)(2)(f) is potentially substantive in nature to Sponsored Participants in that the proposed amendment adds a requirement to the agreement by and between the Sponsoring Member and Sponsored Participant, requiring the Sponsored Participant to contractually agree to follow the requirements of the MAR. Importantly, as part of their obligation to comply with Exchange Rules and procedures, existing Sponsoring Members will be expected to amend any existing contractual arrangements with their Sponsored Participants to include the new contractual provision proposed by the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Defining Sponsored Access

As noted above, the Exchange believes that defining Sponsored Access will provide Sponsoring Members with greater clarity as to which types of market access relationships¹⁸ are subject to Exchange Rule 11.3(a)–(b)(1)–(3), and what obligations Sponsoring Members and Sponsored Participants must satisfy when establishing a Sponsored Access relationship. As such, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and serves to promote just and equitable principles of trade.

The proposed change will also help to reduce confusion by codifying a definition for such activity on the Exchange that is consistent with other industry practices currently in place elsewhere. The Exchange further notes that the proposed Sponsored Access definition is reasonable and does not affect investor protection because the proposed change does not present any novel or unique issues, as the proposed Sponsored Access definition has previously been adopted by Nasdaq.¹⁹

Market Access Rule

As noted above, the proposed addition of 11.3(b)(2)(f) will reinforce to Sponsoring Members that Sponsored Access relationships must comply with the SEC's MAR, as well as Exchange Rules regarding the provision of market access. Also, by adding proposed paragraph 11.3(b)(2)(f), Sponsored Participants are now required to contractually agree that their Sponsored Access to the Exchange must follow the requirements of the MAR.

In this regard, the proposed amendment will help to ensure that by and between the Sponsoring Member and Sponsored Participant that all orders entered onto the Exchange pursuant to a Sponsored Access relationship will follow the requirements of the MAR. As discussed,

¹² Consistent with the proposed definition, such relationships generally include where a broker-dealer allows its customer—such as a hedge fund, mutual fund, bank or insurance company, an Exchange registered market maker, an individual, or another broker-dealer—to use the broker-dealer's market participant identifier ("MPID") or other mechanism or mnemonic to enter orders into the Exchange's System that bypass the Sponsoring Member's order handling system and are electronically routed directly to the Exchange by the Sponsored Participant, including through a service bureau or other third-party technology provider. For the avoidance of doubt, in a scenario where a Sponsored Participant is also an Exchange Member (e.g., where a Sponsored Member provides market access to an Exchange Member Market Maker), (i) the Sponsored Participant will be subject to all Exchange rules and regulations applicable to Members acting in their own capacity, whether the Sponsored Participant accesses the Exchange via their own Membership or via a Sponsored Access arrangement; and (ii) the Sponsoring Member will be responsible for the Sponsored Participant activity just as it would for any other non-Member Sponsored Participant under Rule 11.3(b), including compliance with the MAR requirements and for compliance with the applicable Member-related activity electronically routed to the Exchange via the Sponsored Access arrangement (e.g., the Sponsoring Member would be required to hold appointments and would be subject to applicable requirements as an Exchange Market Maker in the products for which the Sponsored Participant Market Maker is registered and routes orders/quotes via the Sponsored Access arrangement).

¹³ See Rule 11.3(b)(2)(B)(1)–(2).

¹⁴ See Rule 11.3(b)(2)(C).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ *Id.*

¹⁸ *Supra* note 12.

¹⁹ *Supra* note 10.

the Exchange believes the proposed addition of 11.3(b)(2)(f) is non-substantive in nature for Sponsoring Members because as broker-dealers providing market access, Sponsoring Members are already required to comply with the MAR, as well as with existing Exchange Rules regarding market access. The proposed addition of Rule 11.3(b)(2)(f) is potentially substantive in nature to Sponsored Participants in that the proposed amendment adds a new requirement to the relationship by and between the Sponsoring Member and Sponsored Participant, requiring the Sponsored Participant to contractually agree to follow the requirements of the MAR.

Accordingly, the proposed rule change will help to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

For the reasons noted below, 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.

Defining Sponsored Access

The proposed Sponsored Access definition does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed definition merely seeks to make clear to Sponsoring Members that Sponsored Access is a relationship subject to Exchange Rule 11.3(a)–(b)(1)–(3). Moreover, Sponsored Access is a voluntary arrangement that a Sponsoring Member voluntarily elects to enter with its Sponsoring Participant. A Member is not required to become a Sponsoring Member, and in fact, may decline to enter such a relationship with its customers.

Market Access Rule

Additionally, the Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Notably, other exchanges have in place similar rules and documentation requirements applicable to sponsored participants and their sponsoring members.²⁰ Moreover, the proposed Sponsored

Access definition is identical to that adopted by Nasdaq²¹ and currently codified in their rulebook.²²

The proposed rule change to explicitly cite the MAR in Rule 11.3(b)(2)(f) does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, this change is non-substantive as Sponsoring Members are currently responsible for complying with the MAR with respect to their provision of Sponsored Access to Sponsored Participants. While the proposed addition of Rule 11.3(b)(2)(f) is potentially substantive in nature to Sponsored Participants because it requires a Sponsored Participant to contractually agree with its Sponsoring Member to follow the requirements of the MAR, the Exchange notes the proposed contractual requirement also exists in the Nasdaq rulebook²³ and as such, should not raise any new or novel issues for consideration by Sponsored Participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁴ and Rule 19b–4(f)(6)²⁵ thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)²⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),²⁷ the Commission may designate a shorter time of such action is consistent with the protection of investor and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed

rule change may become operative upon filing. The Exchange states that the proposed rule change could immediately benefit market participants by clarifying for Sponsoring Members which relationships are subject to the Exchange's Sponsored Access rules and promoting just and equitable principles of trade. The Exchange also states the proposed addition of 11.3(b)(2)(f) will reinforce to Sponsoring Members their obligation to comply with MAR. Because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.²⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–CboeEDGA–2023–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2023–004. This file number should be included on the subject line if email is used. To help the Commission process and review your

²¹ *Supra* note 10.

²² *Supra* note 11.

²³ *Id.*

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b–4(f)(6).

²⁶ 17 CFR 240.19b–4(f)(6).

²⁷ 17 CFR 240.19b–4(f)(6)(iii).

²⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ *Supra* note 11.

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGA-2023-004 and should be submitted on or before April 20, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-06561 Filed 3-29-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97196; File No. SR-ICC-2023-003]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to British Pounds Sterling as Client-Related Margin

March 24, 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 March 13, 2023, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items

I, II and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to implement certain amendments to ICC's Clearing Rules (the "Rules") and Treasury Operations Policies and Procedures ("ICC Treasury Policy") to add cash British pounds sterling ("GBP") as eligible margin to meet Client-Related Margin requirements. The text of the proposed amendments is attached [sic] in Exhibit 5.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed changes is to modify certain provisions to the ICC Rules and ICC Treasury Policy to add cash British pounds sterling ("GBP") as eligible margin to meet Client-Related Initial Margin requirements. ICC Clearing Participants are required to post Client-Related Initial Margin to collateralize their individual credit exposure to ICC. Such Client-Related Initial Margin is intended to collateralize the risk arising from the client related positions cleared at ICC by ICC Clearing Participants. ICC limits the assets it accepts as collateral to those with low credit, liquidity and market risks. Currently, an ICC Clearing Participant may meet their Client-Related Initial Margin requirements with US dollar cash, Euro cash or US Treasuries. ICC has received verbal feedback from several market participants requesting that ICC Clearing Participants to have the ability to post GBP in addition to the asset types currently accepted by ICC, specifically to support United Kingdom (UK) and European Union (EU) based customer

clearing activity. Several UK and EU market participants have requested the addition of GBP as an ICC acceptable collateral type in connection with their exploration of migrating their credit default swap (CDS) clearing activity to ICC from ICE Clear Europe Limited (ICEU) following the recent ICEU announcement that it plans to cease its CDS clearing services.³ ICC previously accepted GBP to meet Client-Related Initial Margin, Non-Client Initial Margin and Guaranty Fund requirements, but that option was revoked in 2017.⁴ ICC chose to cease accepting GBP cash in 2017 because no ICC Clearing Participants posted GBP cash while it was an acceptable collateral type; and ICC considered GBP cash a less liquid resource due to the potential need to convert it to either US dollar cash or Euro cash.⁵

Recently, ICC has received customer feedback that there is a renewed interest in posting GBP, as many UK and EU based customers maintain GBP balances; and if ICC Clearing Participants were permitted to pass on customer GBP assets to ICC to meet Client-Related Initial Margin requirements, customers could decrease their overall cost of capital and reduce foreign exchange risk by posting GBP instead of converting GBP into another form of eligible collateral. Furthermore, ICC desires to structure its collateral acceptance policy to better serve UK and EU based market participants who may be seeking alternative CDS clearing services given the impending cessation of ICEU's current CDS clearing services. Therefore, allowing ICC Clearing Participants to post GBP to meet Client-Related Initial Margin requirements will facilitate a more effective and efficient transition from alternative CDS clearing services that generally accept GBP as collateral.

For the aforementioned reasons, ICC proposes revising the ICC Rules and ICC Treasury Policy to add GBP to the list of eligible collateral to satisfy Client-Related Initial Margin requirements. With the addition of GBP, the list of eligible collateral to satisfy ICC Client-

³ See ICE Clear Europe public circular dated September 26, 2022, and available here: https://www.ice.com/publicdocs/clear_europe/circulars/C22109.pdf.

⁴ See Securities Exchange Act Release No. 81037 (June 28, 2017) (notice), 82 FR 31121 (July 5, 2017) (SR-ICC-2017-010). The Commission subsequently approved ICC's proposal to remove the eligibility of GBP cash (as well as certain other currencies) as acceptable collateral. See Securities Exchange Act Release No. 81386 (August 14, 2017), 82 FR 39484 (August 18, 2017) (SR-ICC-2017-010).

⁵ See Securities Exchange Act Release No. 81037 (June 28, 2017), 82 FR 31121, 31122 (July 5, 2017) (SR-ICC-2017-010).

²⁹ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Related Initial Margin requirements shall be: US dollar cash, Euro cash, US Treasuries and GBP cash. It should be noted that with respect to liquidity, ICC's Liquidity Risk Management Framework does not consider any collateral posted for Client-Related Initial Margin to be counted as an available liquidity resource, therefore the addition of GBP as an acceptable form of Client-Related Initial Margin collateral will not impact the amount of ICC's liquidity resources or its liquidity stress testing processes. The proposed revisions to the ICC Rules and ICC Treasury Policy are described in detail as follows. Only in the event of an ICC Clearing Participant default would ICC potentially need to convert posted GBP Client-Related Margin to either US dollar cash or Euro cash. The FX risk stemming from the acceptance of GBP as Client-Related Initial Margin is addressed by applying a set of conservative currency haircuts.

ICC Rules

ICC proposes updates to Schedule 401 of the ICC Rules. Specifically, ICC proposes adding GBP to the list of "all eligible collateral" to meet Client-Related Initial Margin requirements identified in Schedule 401 of the ICC Rules. In addition, ICC proposes to modify the Client-Related Initial Margin liquidity requirements set forth in Schedule 401 of the ICC Rules as follows: For US dollar denominated products, ICC proposes changing the (i) minimum percentage of the overall Initial Margin requirement to be met in US dollar denominated assets (*i.e.*, US dollar cash and US Treasuries) from 65% to 45% and; (ii) percentage of the overall Initial Margin requirement that may be met in any eligible collateral (US dollar cash, Euro cash, GBP cash and US Treasuries) from 35% to 55%. For Client-Related Initial Margin requirements for Euro denominated products, ICC proposes changing (i) the minimum percentage of the overall Initial Margin requirement to be met in US dollar cash, Euro cash or US Treasuries from 100% to 45% and; (ii) adding a new category that permits the remaining 55% of the overall Initial Margin requirement to be met in any eligible collateral (US dollar cash, Euro cash, GBP cash and US Treasuries).

Such proposed changes to the Client-Related Initial Margin thresholds are intended to modify the current conservative thresholds which are very restrictive as Client-Related Initial Margin is not part of ICC's Liquidity Risk Management Framework. The proposed modified thresholds reflect the fact that only the first-day liquidity

needs (measured as 45% of Initial Margin requirements) must be met in a form of collateral for which ICC maintains committed repurchase agreements and committed FX facilities. The remaining 55% can be met in any type of accepted collateral. With the proposed modified thresholds, ICC continues to maintain a conservative approach by directly requiring that Client-Related first-day liquidity needs (*i.e.*, 45% of Initial Margin requirements) are met in the forms of permitted collateral for which either collateral transformations are not necessary or committed agreement are in place to provide all necessary immediate liquidity.

ICC Treasury Policy

ICC also proposes updates to the ICC Treasury Policy to add GBP cash as eligible margin to meet Client-Related Initial Margin requirements. The purpose of the ICC Treasury Policy is to articulate the policies and procedures used to support the ICC Treasury Department, which is responsible for daily cash and collateral management of margin and guaranty fund assets, including Client-Related Initial Margin assets. ICC proposes adding a 'British Pound Sterling' sub-section to the 'Investment Strategy' section of the ICC Treasury Policy to indicate that GBP cash posted to meet Client-Related Initial Margin will not be invested, rather, such GBP cash will be held in bank deposits.

Also, ICC proposes updating the 'Cash Settlement' section of the ICC Treasury Policy to add GBP to the existing 9:00 a.m. eastern time deadline for ICC Clearing Participants to notify ICC of its desire for EUR margin withdrawals or substitutions for EUR cash. With this change GBP Client-Related Initial Margin withdrawals and GBP substitutions will have the same 9:00 a.m. eastern time deadline as EUR for ICC Clearing Participants to notify ICC of their desire to withdraw available excess GBP Client-Related Initial Margin or to substitute for GBP cash. Further, ICC proposes to update the 'Acceptable Collateral' section of the ICC Treasury Policy to add GBP cash to ICC's list of acceptable forms of collateral for Initial Margin, noting that GBP cash is only acceptable for Client-Related Initial Margin.

In addition, ICC proposes to update the 'Collateral Valuation' section of the ICC Treasury Policy to describe the valuation processes for GBP cash collateral as follows: (i) for GBP used to cover a US dollar denominated product requirement it is first converted to the US dollar value and then such US dollar

value is haircut at the GBP currency haircut and (ii) for GBP used to cover a EUR denominated product requirement it is first converted to the US dollar value and then such US dollar value is haircut at the GBP currency haircut. In addition, the EUR denominated product requirement is converted to the US dollar value which is then grossed up by the EUR currency haircut. Furthermore, ICC proposes language clean up changes to this same section of the ICC Treasury Policy.

ICC further proposes to update the 'Eligible Client Collateral' section of the Treasury Policy to add GBP cash to ICC's list of eligible collateral for Client-Related Initial Margin, which currently includes US dollar cash, Euro cash, and US Treasuries. ICC proposes updates to the 'Client-Related Initial Margin Liquidity Requirements' section of the Treasury Policy to reflect the proposed liquidity requirement changes, namely, for US dollar denominated products, ICC proposes changing the (i) minimum percentage of the overall Initial Margin requirement to be met in US dollar denominated assets (*i.e.*, US dollar cash and US Treasuries) from 65% to 45% and (ii) percentage of the overall Initial Margin requirement that may be met in any eligible collateral (US dollar cash, Euro cash, GBP cash and US Treasuries) from 35% to 55%. For Client-Related Initial Margin requirements for Euro denominated products, ICC proposes changing (i) the minimum percentage of the overall Initial Margin requirement to be met in US dollar cash, Euro cash or US Treasuries from 100% to 45% and (ii) adding a new category that permits the remaining 55% of the overall Initial Margin requirement to be met in any eligible collateral (US dollar cash, Euro cash, GBP cash and US Treasuries).

Such proposed changes to the Client-Related Initial Margin thresholds are intended to modify the current conservative thresholds which are very restrictive as Client-Related Initial Margin is not part of ICC's Liquidity Risk Management Framework. The proposed modified thresholds reflect the fact that only the first-day liquidity needs (measured as 45% of Initial Margin requirements) must be met in a form of collateral for which ICC maintains committed repurchase agreements and committed FX facilities. The remaining 55% can be met in any type of accepted collateral. With the proposed modified thresholds, ICC continues to maintain a conservative approach by directly requiring that Client-Related first-day liquidity needs (*i.e.*, 45% of Initial Margin requirements) are met in the forms of permitted collateral for which either

collateral transformations are not necessary or committed agreement are in place to provide all necessary immediate liquidity.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act⁶ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F),⁷ as ICC believes acceptance of GBP cash collateral minimizes exposure to FX fluctuations for those market participants that desire to post GBP cash with ICC, and the acceptance of GBP cash for Client-Related Initial Margin does not change the ICC liquidity profile. Therefore, ICC believes that adding GBP cash as eligible collateral to meet Client-Related Initial Margin requirements will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, and contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible. Such changes are consistent with the eligible collateral accepted by other market participants.⁸ Further, the proposed updates will have no impact on ICC's liquidity profile as GBP cash will only be accepted with respect to Client-Related Initial Margin (and not for house Initial Margin or Guaranty Fund obligations) and ICC's immediate liquidity needs are not met by any Client-Related collateral. In addition to GBP cash, ICC will continue to accept US dollar cash, Euro cash, and US Treasuries as eligible collateral, in accordance with Schedule 401 of the ICC Rules. With the addition of GBP, the

list of collateral accepted by ICC will remain limited to those collateral types with low credit, liquidity, and market risks consistent with Rule 17Ad-22(e)(5).⁹ Furthermore, ICC will apply conservative haircuts and concentration limits to GBP cash accepted as Client-Related Initial Margin, which will be reviewed no less than annually, consistent with Rule 17Ad-22(e)(5).¹⁰ Such collateral will continue to be held in a manner whereby risk of loss or of delay in access to them is minimized, consistent with Section 17A(b)(3)(F).¹¹

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule changes will have any impact, or impose any burden, on competition. The changes to ICC's eligible collateral apply uniformly across all market participants and the addition of GBP cash to the list of acceptable collateral does not require any market participant to deposit GBP with ICC, rather, the expansion of ICC's acceptable collateral list provides additional optional choices to all market participants with respect to the forms of collateral deposited at ICC. Therefore, ICC does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ICC-2023-003 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-ICC-2023-003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.ice.com/clear-credit/regulation>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICC-2023-003 and should be submitted on or before April 20, 2023.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ *Id.*

⁸ See for example (i) ICE Clear Europe *List of Permitted Cover, Margin Cover and Limits on Collateral* (February 2023) available here: https://www.ice.com/publicdocs/clear_europe/list-of-permitted-covers.pdf and (ii) LCH SA list of acceptable currencies to cover margin requirements available here: <https://www.lch.com/collateral-management/sa-collateral-management/sa-acceptable-collateral/sa-acceptable-cash>.

⁹ 17 CFR 240.17Ad-22(e)(5).

¹⁰ *Id.*

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–06559 Filed 3–29–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 12030]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: Exhibition of “The Encounter: Barbara Chase-Ribound and Alberto Giacometti”

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in exhibition “The Encounter: Barbara Chase-Ribound and Alberto Giacometti” at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Scott Weinhold,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–06643 Filed 3–29–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0055]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Training Certification for Entry-Level Commercial Motor Vehicle Operators

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew an ICR titled, “Training Certification for Entry-Level Commercial Motor Vehicle Operators,” which will continue to be used to register providers of entry-level driver training and to provide State Drivers’ Licensing Agencies with information on individuals who have completed said training. If approved, this renewal will allow FMCSA to continue to collect information on registered training providers and entry-level driver training certification information until 2026.

DATES: Comments on this notice must be received on or before May 30, 2023.

ADDRESSES: You may submit comments identified by Federal Docket Management System Docket Number FMCSA–2023–0055 using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.

- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that

all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>, and follow the online instructions for accessing the docket, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the “FAQ” section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Joshua Jones, Commercial Driver’s License Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–366–7332; Joshua.jones@dot.gov.

SUPPLEMENTARY INFORMATION:

Background: The Federal Motor Carrier Safety regulations require minimum training standards for entry-level drivers, and include two separate information collection actions: (1) Training providers must electronically submit information to FMCSA’s Training Provider Registry (TPR) to ensure that they meet the new training provider eligibility requirements and may therefore be listed on a new TPR; and (2) after an individual driver-trainee completes training administered by a training provider listed on the TPR, that training provider must electronically submit training certification information regarding the driver-trainee to the TPR.

¹² 17 CFR 200.30–3(a)(12).

While there have been a number of regulatory actions delaying compliance with these requirements, all have been in effect since February 7, 2022. The information collection estimates included in this renewal action are based on actual data from the TPR and from training certification transactions over the past year.

Title: Training Certification for Entry-Level Commercial Motor Vehicle Operators.

OMB Control Number: 2126-0028.

Type of Request: Renewal of a currently-approved ICR.

Respondents: Training Providers.

Estimated Number of Respondents: 7,774.

Estimated Time per Response (average): 0.55 hours.

Expiration Date: June 30, 2023.

Frequency of Response: All training providers will need to initially register once. Additionally, all registered training providers must update their information at least biennially. They are also required to provide an update if any key information (company name, address, phone number, types of training offered, etc.) changes prior to their biennial update. After an individual driver-trainee completes training administered by a training provider listed on the TPR, that training provider must submit training certification information regarding the driver-trainee to the TPR.

Estimated Total Annual Burden: 80,299 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2023-06547 Filed 3-29-23; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0124; FMCSA-2014-0103; FMCSA-2014-0106; FMCSA-2014-0385; FMCSA-2015-0329; FMCSA-2016-0002; FMCSA-2017-0058; FMCSA-2018-0137; FMCSA-2020-0027]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 12 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on April 21, 2023. The exemptions expire on April 21, 2025. Comments must be received on or before May 1, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA-2013-0124, Docket No. FMCSA-2014-0103, Docket No. FMCSA-2014-0106, Docket No. FMCSA-2014-0385, Docket No. FMCSA-2015-0329, Docket No. FMCSA-2016-0002, Docket No. FMCSA-2017-0058, Docket No. FMCSA-2018-0137, or Docket No. FMCSA-2020-0027 using any of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov/, insert the docket number (FMCSA-2013-0124, FMCSA-2014-0103, FMCSA-2014-0106, FMCSA-2014-0385, FMCSA-2015-0329, FMCSA-2016-0002, FMCSA-2017-0058, FMCSA-2018-0137, or FMCSA-2020-0027) in the keyword box and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click on the "Comment" button. Follow the online instructions for submitting comments.

- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC

20590-0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.

- *Fax:* (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001, (202) 366-4001, fmcsamedical@dot.gov. Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2013-0124, Docket No. FMCSA-2014-0103, Docket No. FMCSA-2014-0106, Docket No. FMCSA-2014-0385, Docket No. FMCSA-2015-0329, Docket No. FMCSA-2016-0002, Docket No. FMCSA-2017-0058, Docket No. FMCSA-2018-0137, or Docket No. FMCSA-2020-0027), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov/, insert the docket number (FMCSA-2013-0124, FMCSA-2014-0103, FMCSA-2014-0106, FMCSA-2014-0385, FMCSA-2015-0329, FMCSA-2016-0002, FMCSA-2017-0058, FMCSA-2018-0137, or FMCSA-2020-0027) in the keyword box and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, click the "Comment" button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an

unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA–2013–0124, FMCSA–2014–0103, FMCSA–2014–0106, FMCSA–2014–0385, FMCSA–2015–0329, FMCSA–2016–0002, FMCSA–2017–0058, FMCSA–2018–0137, or FMCSA–2020–0027) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver’s medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear

at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

The 12 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 12 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 12 drivers in this notice remain in good standing with the Agency. In addition, for commercial driver’s license (CDL) holders, the Commercial Driver’s License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver’s Licensing Agency. These factors provide an adequate basis for predicting each driver’s ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of April 21, 2023, and in accordance with 49 U.S.C. 31136(e) and

31315(b), the following 12 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Maurice Abenchuchan (FL)
Ivan Batista (NJ)
Prince Bempong (MA)
Richard Boggs (OH)
Keith Byrd (TN)
Perry Cobb (TN)
Nathaniel Godfrey (KY)
Reynaldo Martinez (TX)
Floyd McClain (OH)
David Sanders (IL)
John Turner (CO)
Anthony Witcher (MI)

The drivers were included in docket numbers FMCSA–2013–0124, FMCSA–2014–0103, FMCSA–2014–0106, FMCSA–2014–0385, FMCSA–2015–0329, FMCSA–2016–0002, FMCSA–2017–0058, FMCSA–2018–0137, or FMCSA–2020–0027. Their exemptions are applicable as of April 21, 2023 and will expire on April 21, 2025.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5T; and (2) report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 12 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in

§ 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023-06595 Filed 3-29-23; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council; Meeting

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Notice of meeting.

SUMMARY: The Internal Revenue Service Advisory Council will hold a public meeting.

DATES: The meeting will be held Wednesday, April 26, 2023.

ADDRESSES: The meeting will be held via telephone conference line.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Brown, Office of National Public Liaison, at 202-317-6564 or send an email to PublicLiaison@irs.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 5 U.S.C. 10(a)(2) of the Federal Advisory Committee Act, that a public meeting via conference line of the Internal Revenue Service Advisory Council (IRSAC) will be held on Wednesday, April 26, 2023, to discuss topics that may be recommended for inclusion in a future report of the Council. The meeting will take place at 3:00 p.m. Eastern Time.

To confirm your attendance, members of the public may contact Anna Brown at 202-317-6564 or send an email to PublicLiaison@irs.gov. Attendees are encouraged to join at least five minutes before the meeting begins.

Should you wish the IRSAC to consider a written statement germane to the Council's work, please call 202-317-6564 or email PublicLiaison@irs.gov.

Dated: March 24, 2023.

John A. Lipold,

Designated Federal Official, Office of National Public Liaison, Internal Revenue Service.

[FR Doc. 2023-06567 Filed 3-29-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service (IRS) Information Collection Requests

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before May 1, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. *Title:* Application for Reduced Rate of Withholding on Whistleblower Award Payment.

OMB Number: 1545-2273.

Form Number: 14693.

Abstract: The Application for Reduced Rate of Withholding on Whistleblower Award Payment will be used by the whistleblower to apply for a reduction in withholding to minimize the likelihood of the IRS over withholding tax from award payments providing whistleblowers with a pre-award payment opportunity to substantiate their relevant attorney fees and court costs. The Whistleblower Office will review and evaluate the form and calculate the rate.

Current Actions: There are no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Annual Responses: 100.

Estimated Time per Response: 45 mins.

Estimated Total Annual Burden Hours: 75.

2. *Title:* Country-by-Country Reporting.

OMB Number: 1545-2272.

Form Number: Form 8975 and Schedule A (Form 8975).

Abstract: 26 CFR 1.6038-4, issued under the authority of 26 U.S.C. 6001, 6011, 6012, 6031, 6038, and 7805, requires U.S. persons that are the ultimate parent entity of a U.S. multinational enterprise (U.S. MNE) group with annual revenue for the preceding reporting period of \$850 million or more to file Form 8975 with their income tax return. Form 8975 and Schedules A (Form 8975) are used by filers to annually report certain information with respect to the filer's U.S. MNE group on a country-by-country basis. The filer must list the U.S. MNE group's constituent entities, indicating each entity's tax jurisdiction (if any), country of organization and main business activity, and provide financial and employee information for each tax jurisdiction in which the U.S. MNE does business. The financial information includes revenues, profits, income taxes paid and accrued, stated capital, accumulated earnings, and tangible assets other than cash. Separate Schedules A (Form 8975) are filed for each tax jurisdiction in which a group has one or more constituent entities resident.

Current Actions: There is no change to the existing collection previously approved by OMB. However, the total burden has increased due to better estimates.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,045.

Estimated Number of Responses: 46,790.

Estimated Time per Response: 6.41 hours.

Estimated Total Annual Burden Hours: 299,822.

3. *Title:* Election to Expense Certain Depreciable Assets.

OMB Number: 1545-2197.

Form Number: Form 1097-BTC.

Abstract: Form 1097-BTC, Bond Tax Credit, is an information return used by a regulated investment company (RIC) to report tax credit bond credits distributed to shareholders. Shareholders of the RIC include their proportionate share of the interest income attributable to the credits and are allowed to claim the proportionate share of credits on their tax returns. A RIC must report the shareholder's proportionate share of credits and gross income after the close of the RIC's tax

year. Form 1097–BTC, Bond Tax Credit, has been designed to report to the taxpayers and the IRS the tax credit distributed.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,500.

Estimated Time per Respondent: 19 minutes.

Estimated Total Annual Burden Hours: 474.

4. *Title:* Affordable Care Act Internal Claims and Appeals and External review Disclosures.

OMB Number: 1545–2182.

Regulation Number: T.D. 9494 and T.D. 9955.

Abstract: This collection of information request includes the information collection and third-party notice and disclosure requirements that a plan must satisfy under final regulations implementing provisions of the Affordable Care Act pertaining to internal claims and appeals, and the external review process. The No Surprise Act extends the balance billing protections related to external reviews to grandfathered plans. The definitions of group health plan and health insurance issuer that are cited in section 110 of the No Surprises Act include both grandfathered and non-grandfathered plans and coverage. Accordingly, the practical effect of section 110 of the No Surprises Act is that grandfathered health plans must provide external review for adverse benefit determinations involving benefits subject to these surprise billing protections. Grandfathered and non-grandfathered plans must provide claimants, free of charge, any new or additional evidence considered, relied upon, or generated by the plan or issuer in connection with the claim, and the requirement to comply either with a State external review process or a Federal review process. The disclosure requirements of the Federal external review process require (1) a preliminary review by plans of requests for external appeals; (2) Independent Review Organizations (IROs) to notify claimants of eligibility and acceptance for external review; (3) the plan or issuer to provide IROs with documentation and other information considered in making adverse benefit determination; (4) the IRO to forward to the plan or issuer any information submitted by the claimant; (5) plans to notify the claimant and IRO if it reverses its decision; (6) the IRO to notify the claimant and plan of the

result of the final external appeal; (7) the IRO to maintain records for six years.

Current Actions: There is a change to the paperwork burden previously approved by OMB. Adjustments to the burden estimates result from updated estimates on the number of ERISA-covered plans and policyholders.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Group Health Plans Internal Claims and Appeals and External Review Processes

Estimated Number of Respondents: 314,560.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 14,432 hours.

Procedures for Federal External Review and Model Notices Relating to Internal Claims and Appeals and External Review Under the Patient Protection and Affordable Care Act

Estimated Number of Respondents: 76,014.

Estimated Total Annual Burden Hours: .4 hours.

Estimated Number of Respondents: 4,615.

Total Estimated Time per Respondent: 390,574.

Total Estimated Annual Burden Hours: 19,047 hours.

5. *Title:* Taxation and Reporting of REIT Excess Inclusion Income.

OMB Number: 1545–2036.

Notice Number: Notice 2006–97.

Abstract: This notice requires certain REITs, RICS, partnerships and other entities that have excess inclusion income to disclose the amount and character of such income allocable to their record interest owners. The record interest owners need the information to properly report and pay taxes on such income.

Current Actions: There are no changes being made to the notice that would affect burden at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 100 hours.

6. *Title:* Domestic Production Activities Deduction.

OMB Number: 1545–1984.

Form Number: 8903.

Abstract: Taxpayers will use Form 8903 and related instructions to calculate the domestic production activities deduction.

Current Actions: There is no change to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 30,000.

Estimated Time per Respondent: 24 hours, 40 minutes.

Estimated Total Annual Burden Hours: 739,800 hours.

7. *Title:* Consent to Disclose Tax Compliance Check.

OMB Number: 1545–1856.

Form Number: Form 14767.

Abstract: Form 14767 is used to authorize the Internal Revenue Service (IRS) to prepare a tax compliance report that discloses confidential tax information to a third-party appointee for Federal employment.

Current Actions: Form 13362 was used by Personnel Offices for external applicants to allow IRS to disclose tax-related information to the Office of Personnel Management for suitability determinations. This form has been obsolete and replaced by Form 14767.

Type of Review: Revision of a currently approved collection.

Affected Public: Federal Government.

Estimated Number of Respondents: 46,000.

Estimated Time per Respondent: 10 mins.

Estimated Total Annual Burden Hours: 7,664.

8. *Title:* Health Coverage Tax Credit (HCTC) Advance Payments.

OMB Number: 1545–1813.

Form Number: Form 1099–H.

Abstract: Form 1099–H is used to report advance payments of health insurance premiums to qualified recipients for their use in computing the allowable health insurance credit on Form 8885.

Current Actions: There are no changes being made to the form at this time. However, the estimated number of responses is being decreased as a result of updated filing estimates. *Type of Review:* Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 2,200.

Estimated Time per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 660.

9. *Title:* Special Rules for Long-Term Contracts Under Section 460.

OMB Number: 1545–1732.

Form Number: 8697.

Regulation Project Number: 8775, 8929, 8995, and 9137.

Abstract: IRC section 460 generally provides rules that requires taxpayers to determine taxable income from a long-term contract using the percentage-of-completion (PCM) method and pay, or be entitled to receive, interest computed using the look-back method.

Form 8697 is used by taxpayers to figure the interest due or to be refunded under the look-back method of IRC section 460(b)(2) on certain long-term contracts that are accounted for under either the PCM method or the percentage-of-completion capitalized cost method.

TD 8775 added Treasury Regulations section 1.460–6(j), providing taxpayers with the requirements to make an election not to apply the look-back method to long-term contracts in de minimis cases.

TD 8929 added Treasury Regulations section 1.460–1(e)(4), requiring taxpayers to attach a statement with specific information to their income tax return if they sever an agreement or aggregate two or more agreements during the taxable year.

TD 8995, as amended by TD 9137, added Treasury Regulations section 1.460–6(g)(3)(ii)(D) providing rules concerning a mid-contract change in taxpayer of a contract accounted for under a long-term contract method of accounting. The regulation requires the previous taxpayer to provide specific information to the new taxpayer to help the new taxpayer apply the look-back method when the income from a long-term contract has been previously reported by another taxpayer.

Current Actions: There is no change to the existing collection. However, the estimated burden for individuals filing Form 8697 is approved under OMB control number 1545–0074. The estimated burden for businesses filing Form 8697 is approved under OMB control number 1545–0123.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households, and business or other for-profit organizations.

Estimated Number of Responses: 75,010.

Estimated Time per Respondent: 22 minutes.

Estimated Total Annual Burden Hours: 26,668.

10. Title: Regulations Governing Practice Before the Internal Revenue Service.

OMB Number: 1545–1726.

Regulation Project and Associated Form Numbers: T.D. 9527, T.D. 9011,

Rev. Proc. 2012–12, Form 14360, Form 14364, and Form 14392.

Abstract: The regulations affect individuals who are eligible to practice before the Internal Revenue Service and authorize the Director of Practice to act upon applications for enrollment to practice before the Internal Revenue Service. The Director of Practice will use certain information to ensure that: (1) enrolled agents properly complete continuing education requirements to obtain renewal; (2) practitioners properly obtain consent of taxpayers before representing conflicting interests; (3) practitioners do not use e-commerce to make misleading solicitations.

Current Actions: There are no changes being made to the regulation, forms, or burden estimates at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 718,400.

Estimated Time per Respondent: 2 hours, 28 minutes.

Estimated Total Annual Burden Hours: 1,777,125 hours.

11. Title: Employer-Designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

OMB Number: 1545–1716.

Notice Number: Notice 2001–1.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers in the food and beverage industry that have employee who receive both cash and charged tips; in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeepers: 20.

Estimated Average Time per Respondent/Recordkeeper: 44 hours.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 870 hours.

12. Title: Rule to be Included in Final Regulations Under Section 897(e) of the Code.

OMB Number: 1545–1660.

Regulation Project Number: Notice 99–43.

Abstract: Notice 99–43 announced modification of the current rules under Temporary Regulation section 1.897–6T(a)(1) regarding transfers, exchanges and other dispositions of U.S. real

property interests in nonrecognition transactions occurring after June 18, 1980. The notice provided that, contrary to section 1.897–6T(a)(1), a foreign taxpayer will not recognize a gain under Code 897(e) for an exchange described in Code section 368(a)(1)(E) or (F), provided the taxpayer receives substantially identical shares of the same domestic corporation with the same divided rights, voting power, liquidation preferences, and convertibility as the shares exchanged without any additional rights or features.

Current Actions: There are no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and corporations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 200.

13. Title: Request for Innocent Spouse Relief.

OMB Number: 1545–1596.

Form Numbers: 8857 and 8857(SP).

Abstract: Section 6013(e) of the Internal Revenue Code allows taxpayers to request, and IRS to grant, “innocent spouse” relief when: the taxpayer files a joint return with tax substantially understated; the taxpayer establishes no knowledge of, or benefit from, the understatement; and it would be inequitable to hold the taxpayer liable. Forms 8857 and 8857(SP) is used to request relief from liability of an understatement of tax on a joint return resulting from a grossly erroneous item attributable to the spouse.

Current Actions: There are no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 6 hours, 32 minutes.

Estimated Total Annual Burden Hours: 316,000.

14. Title: Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

OMB Number: 1545–1533.

Revenue Procedure Number: Revenue Procedure 97–22.

Abstract: This revenue procedure provides guidance to taxpayers who maintain books and records by using an

electronic storage system that either images their paper books and records or transfers their computerized books and records to an electronic storage media, such as an optical disk. The information requested in the revenue procedure is required to ensure that records maintained in an electronic storage system will constitute records within the meaning of Internal Revenue Code section 6001.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 20 hours, 1 minute.

Estimated Total Annual Burden Hours: 1,000,400.

15. *Title:* Hedging Transactions.

OMB Number: 1545–1480.

Regulation Project Number: T.D. 8985.

Abstract: TD 8985 contains final regulations relating to the character of gain or loss from hedging transactions. The regulations reflect changes to the law made by the Ticket to Work and Work Incentives Improvement Act of 1999. The regulations affect businesses entering in to hedging transactions.

Current Actions: There are no changes to burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 167,100.

Estimated Time per Respondent: 8 hours.

Estimated Total Annual Burden Hours: 171,050 hours.

16. *Title:* Continuing Education Provider Application and Request for Provider Number.

OMB Number: 1545–1459.

Form Number: Form 8498.

Abstract: Form 8498 is used to: (1) register as a new provider of continuing educational programs being offered to IRS enrolled agents, enrolled retirement plan agents, and other tax return preparers; (2) annually renew the status as an IRS-approved continuing educational provider; and (3) add new programs to an existing IRS-approved provider continuing education curriculum.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 800.
Estimated Time per Respondent: 36 minutes.

Estimated Total Annual Burden Hours: 480.

17. *Title:* Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

OMB Number: 1545–1099.

Form Project Number: Form 8811.

Abstract: Current regulations require real estate mortgage investment conduits (REMICs) to provide Forms 1099 to true holders of interests in these investment vehicles. Because of the complex computations required at each level and the potential number of nominees, the ultimate investor may not receive a Form 1099 and other information necessary to prepare their tax return in a timely fashion. Form 8811 collects information for publishing by the IRS so that brokers can contact REMICs to request the financial information and timely issue Forms 1099 to holders.

Current Actions: There is no change in the form previously approved however, an increase in the estimated annual responses will increase the overall estimated burden by 8,760 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 3,000.

Estimated Time per Respondent: 4 Hours 23 minutes.

Estimated Total Annual Burden Hours: 13,140.

18. *Title:* Buildings qualifying for carryover allocations.

OMB Number: 1545–0990.

Form Number(s): 8610, Sch A (F8610).

Abstract: State housing credit agencies (Agencies) are required by Code section 42(l)(3) to report annually the amount of low-income housing credits that they allocated to qualified buildings during the year. Agencies report the amount allocated to the building owners and to the IRS in Part I of Form 8609. Carryover allocations are reported to the Agencies in carryover allocation documents. The Agencies report the carryover allocations to the IRS on Schedule A (Form 8610). Form 8610 is a transmittal and reconciliation document for Forms 8609, Schedule A (Form 8610), binding agreements, and election statements.

Current Actions: There is no change to the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 1,353.

Estimated Time per Respondent: 4 Hour 58 minutes.

Estimated Total Annual Burden Hours: 6,738.

19. *Title:* Estate and Gift Taxes; Qualified Disclaimers of Property.

OMB Number: 1545–0959.

Regulation Project Number: TD 8095.

Abstract: Internal Revenue Code section 2518 allows a person to disclaim an interest in property received by gift or inheritance. The interest is treated as if the disclaimant never received or transferred such interest for Federal gift tax purposes. A qualified disclaimer must be in writing and delivered to the transferor or trustee.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,000.

20. *Title:* Biofuel Producer Credit.

OMB Number: 1545–0231.

Form Number: 6478.

Abstract: Form 6478 is used to figure your section 40 biofuel producer credit. You claim the credit for the tax year in which the sale or use occurs. This credit consists of the second-generation biofuel producer credit.

Current Actions: There are no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,300.

Estimated Time per Respondent: 4 hours, 36 mins.

Estimated Total Annual Burden Hours: 13,233.

21. *Title:* Application for Extension of Time to File Certain Employee Plan Returns.

OMB Number: 1545–0212.

Form Number: 5558.

Abstract: This form is used by employers to request an extension of time to file the employee plan annual information return/report (Form 5500 series) or the employee plan excise tax return (Form 5330). The data supplied

on Form 5558 is used to determine if such extension of time is warranted.

Current Actions: There is no change to the form, however there is an increase in the estimated number of respondents previously approved by OMB.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 671,189.

Estimated Time per Respondent: 1 hours, 11 minutes.

Estimated Total Annual Burden Hours: 798,715 hours.

22. Title: Original Issue Discount.

OMB Number: 1545–0117.

Regulation Project Number: Form 1099–OID.

Abstract: Form 1099–OID is used for reporting original issue discount as required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.

Current Actions: There are changes to the burden indicators used to compute burden and an estimated decrease in the number of responses previously approved by OMB.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit groups.

Estimated Number of Responses: 4,411,100.

Estimated Time per Respondent: 23 minutes.

Estimated Total Annual Burden Hours: 1,720,329.

23. Title: Request for Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

OMB Number: 1545–0004.

Form Project Number: Forms SS–8 and SS–8(PR).

Abstract: Firms and workers file Form SS–8 to request a determination of the status of a worker under the common law rules for purposes of federal employment taxes and income tax withholding.

Current Actions: This request is being submitted to update the filing estimates. The estimated number of annual responses has increased by 1,045. However, the total estimated burden has decreased by 27,333 hours due to changes in the methodology.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, Federal government, farms, and state, local or tribal governments.

Estimated Number of Respondents: 5,750.

Estimated Time per Respondent: 21 Hours 6 minutes.

Estimated Total Annual Burden Hours: 121,288.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–06624 Filed 3–29–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans Legacy Grants Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of funding availability.

SUMMARY: The Department of Veterans Affairs (VA) National Cemetery Administration (NCA) is awarding grants for a maximum of \$500,000 per awardee through the Veterans Legacy Grants Program (VLGP), to provide funding to educational institutions and other eligible entities to conduct cemetery research and produce educational tools for the public to utilize and learn about the histories of Veterans interred in VA national cemeteries and VA grant-funded State and Tribal Veterans' cemeteries. This notice includes information about the process for applying for a VLGP grant; criteria for evaluating applications; priorities related to the award of grants; and other requirements and guidance regarding VLGP grants.

DATES: Applications for grants under VLGP must be received by the VLGP Office by 5:00 p.m., Eastern Time, on May 1, 2023. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour. VA will treat any application that is received after the deadline as ineligible for consideration. Applicants should take this requirement into account and submit their materials early to avoid the risk of unanticipated delays, computer service outages, or other submission-related problems that might result in ineligibility. Successful applicants will be notified within approximately 45 days following the application deadline. The VLGP grant award will be awarded within fiscal year (FY) 2023 and all work under the award must occur in FY 2023.

ADDRESSES:

For a Copy of the Application

Package: The required documentation for an application is outlined under Section IV. (Application Documentation Required) of this Notice of Funding

Availability (NOFA). Questions should be referred to the VLGP Office by email at: VLGP@VA.gov. For detailed VLGP information and requirements, see 38 CFR 38.710–38.785.

For Submission of an Application Package: Applicants must submit applications electronically by following instructions found at: www.grants.gov.

For Technical Assistance: Information regarding how to obtain technical assistance with the preparation of a grant application can be found at: www.grants.gov or email VLGP@VA.GOV.

FOR FURTHER INFORMATION CONTACT: John Williams, Grants Specialist, Veterans Legacy Grants Program, National Cemetery Administration, Department of Veterans Affairs, VLGP@VA.GOV or 314–934–8825. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: Veterans Legacy Grant Program.

Announcement Type: Initial.

Funding Opportunity Number: VA–NCA–VLGP–FY2023.

Assistance Listing: 64.204, VA Veterans Legacy Grant Program.

I. Funding Opportunity Description

A. Purpose: Funding for VLGP grants under this NOFA is authorized by 38 U.S.C. 2400 note. This NOFA announces the availability of funding to applicants found eligible to receive a VLGP grant to tell the stories of Veterans interred in these cemeteries, especially Veterans who have significant connection to the local community and Veterans from historically underrepresented groups, to include Veterans or Service members underrepresented by race, ethnicity or identity as well as Veterans or Service members from our LGBTQ+ community, from any period of American history, so they are honored in perpetuity.

Funding is interdisciplinary and not restricted according to academic focus or specialization. Eligible applicants are institutions of higher learning, educational institutions, local educational agencies, State educational agencies or non-profits. Successful applicants will:

1. Meet VLGP's mission to commemorate the Nation's Veterans and Service members through the discovery and sharing of their stories. VLGP encourages students and teachers at the K–12 levels and universities around the country to immerse themselves in the rich historical resources found within 1 or more of VA's 155 national cemeteries or 1 or more of the 121 VA grant-funded

State, Territorial or Tribal Veterans cemeteries.

2. Include a study of Veterans or Service members interred in one of VA's national cemeteries or in one of the VA grant-funded State, Territorial or Tribal cemeteries.

3. Foster engagement in the communities surrounding one or several of the national cemeteries or VA grant-funded cemeteries.

4. Tell the stories of Veterans interred in these cemeteries, especially Veterans who have significant connection to the local community and Veterans from historically underrepresented groups, to include Veterans or Service members underrepresented by race, ethnicity or identity as well as Veterans or Service members from our LGBTQ+ community, from any period of American history.

B. Priorities: Competitive Preference Priorities (CPP) for FY 2023 and any subsequent year in which we make awards from the list of applications from this annual competition will align with specific VLGP initiatives, which will be noted as CPPs. NCA will award one priority point for each CPP addressed by the application up to a maximum of three priority points. Each CPP must be described in a one-page abstract submitted with the application. To earn CPP's submitted applications will:

1. Successfully showcase Veterans or Service members interred in qualifying cemeteries that have never been studied as part of a previous VLGP project and in a new geographic region where a VLGP project has not had a presence.

2. Creatively highlight interred Veterans and Service members who have never been studied or researched in previous VLGP projects.

3. Maximize the use of best practices in digital scholarship, pedagogy, scholarly communication and digital public engagement that expands biographical content within NCA's Veterans Legacy Memorial (www.va.gov/remember). Note: If applicants wish to be considered for CPP points, applicants must include, in a one-page abstract submitted with the application, a statement indicating which of the CPPs are addressed. If an applicant addresses CPPs, this information must also be listed on the VLGP Profile Form.

C. Total Available Funds: The total funds allocated for VLGP in FY 2023 is \$2.2 million. VA may allocate additional funds, depending on the availability of funds and the number of compliant grant applications received.

Under Public Law 116–107 1(a)(4) (codified at 38 U.S.C. 2400 note), each grant may not exceed \$500,000 in total costs for the entire grant period. VA will

only accept one application per applicant. VA reserves the right to select which application to consider based on the submission dates and times or based on other factors included in 38 CFR 38.710–38.785.

D. Eligible Recipients: Applicants must be eligible entities that meet one of the definitions in 38 CFR 38.715 for an institution of higher learning, educational institution, local educational agency, State educational agency or non-profit.

II. Award Information

A. Allocation of Funds: \$2.2 million in Federal funding is available under this NOFA with a maximum award of \$500,000 per grant. Each VLGP grant must be awarded in FY 2023, and the period of performance under the grant must have a start date that is also within FY 2023. The number of grants awarded during this period is at the discretion of VA.

B. Funding Restrictions: No part of an award under this NOFA may be used for a course buyout, and the grant funds shall not be used to substitute a class that a professor is required to teach during an academic year.

C. Funding Limitations: VA's decisions will be based on factors such as need, geographic dispersion and availability of funding.

III. Application and Submission Information

A. Obtaining a Grant Application: The required documentation for an application submission is outlined in Section IV. (Application Documentation Required) of this NOFA. All applications must be submitted through: www.grants.gov, which will outline required forms and documentation. Registration information is available at: www.grants.gov. Questions should be referred to the VLGP Office at: VLGP@VA.gov. For detailed VLGP information and requirements, see 38 CFR 38.710–38.785.

B. Submitting a Grant Application: Applicants must ensure that they include all required documents in their email application submission, carefully follow the format and provide the information requested and described below. Submission of an application that contains conflicting information or is incomplete, untimely or incorrectly formatted will result in the application being rejected. Applicants must submit applications electronically by following instructions found at: www.grants.gov. Applications must be submitted as a complete package. Materials arriving separately will not be included in the application package for consideration

and may result in the application being rejected or not funded.

C. Unique Entity Identifier and System for Award Management (SAM): Applicants (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) are required to: (i) be registered in SAM before submitting their application; (ii) provide a valid unique entity identifier in its application; and (iii) provide proof of an active and updated SAM registration at the time of application submission, which must be maintained throughout the award period as a continuing condition of eligibility. The Federal awarding agency will not make a Federal award to an applicant that does not have an active and updated SAM registration at the time of application submission.

IV. Application Documentation Required

A. Application for Federal Assistance (SF–424) and Supporting Documents: Applicants are required to complete the SF–424 and attach the following supporting documents following application instructions outlined on www.grants.gov.

1. **Project Abstract:** In 500 words or less, double-spaced, 12-point Times New Roman font, provide a brief abstract of the proposed project. As applicable, include other information relevant to an understanding of the overall project and specify if you wish to be considered for CPP points set out in Section I.B. (Priorities) of this NOFA.

2. **Project Proposal:** In 1,200 words or less, double-spaced, 12-point Times New Roman font, include a narrative outlining the proposed plan for the project and include a detailed timeline for the tasks outlined in the project description and proposed milestones. See Section IV.C. (Project Proposals) for additional information.

3. **Expertise and Capacity:** In 500 words or less, double-spaced, 12-point Times New Roman font, include a description of the applicant's ability and capacity to administer the project. This should include any evidence of past experience with projects similar in scope as defined by the NOFA, to include descriptions of the engagement model; examples of successful leadership and management of a project of similar (or greater) scale and budget; or related work in this field.

4. **Proposed Budget:** In 500 words or less, double-spaced, 12-point Times New Roman font, provide the proposed

budget and budget narrative which should identify and justify all costs and proposed expenditures, to include additional compensation and honoraria (and to whom such payments would be made); equipment costs; production costs; and travel costs. The word count does not include charts, graphs or spreadsheets an applicant may choose to provide as additional attachments. Applicants may include indirect costs as part of their proposed budget. Applicants that have a previously negotiated indirect cost rate with a cognizant agency may utilize this rate when preparing and submitting a proposed budget. Those applicants that do not have a previously negotiated indirect cost rate may elect to apply a de minimis rate of 10% indirect costs. Applicants that do not have a previously negotiated rate but wish to establish a negotiated indirect cost rate should submit alongside their proposal an Indirect Cost Rate Proposal justifying and evidencing the applicant's proposed indirect cost rate.

5. *Project Team*: The applicant must provide a narrative description of anticipated project team and any extramural partner(s), including the responsibilities of the principal investigator, the co-principal investigators and any extramural partner entity.

B. *Eligibility*: Applicants must meet definitions for eligible recipients in 38 CFR 38.715(c) and provide supporting documentation of status (for example, Section 503(c)(3) status, consolidated State plan).

C. *Project Proposals*: Project Proposals should support the memorialization of the Nation's Service members' and Veterans' legacy enshrined in national cemeteries or VA grant-funded cemeteries in the following areas:

1. *Outreach*: A framework for digital and non-digital outreach based on student research focused on a VA national cemetery (or cemeteries) or VA grant-funded State, Territorial or Tribal cemetery (or cemeteries).

2. *Educational Materials*: A framework of digital instructional materials relevant to the grade level of K–12 students involved (e.g., lesson plans, learning guides). Alternatively, materials intended for general education of the public may be developed in conjunction with the above or in lieu of it, but preference will be given to proposals that include development of instructional materials intended for K–12 audiences.

3. *Extended Memorialization*: A description of the plan to present the students' research in a way that is appropriate to their discipline and

accessible to the public (such as a website or other medium).

Materials produced under this grant program must be based on primary research on the Service members and/or Veterans interred or memorialized in VA's national cemeteries or VA grant-funded cemeteries, conducted by students under the guidance of an appropriate educational professional (e.g., licensed teacher, tenure-track professor with terminal degree or program officer of an educational non-profit entity). The research must be produced into formats accessible to students, teachers, scholars and the American public. This research may be conducted within the context of any established academic discipline or may be interdisciplinary as long as the research conveys findings about individual Service members or Veterans that expands awareness and knowledge of those whose stories have not been told before. NCA's VLGP is committed to memorializing all Service members and Veterans, but Service members and Veterans from underrepresented communities are of particular interest. No preference will be given to any disciplinary or methodological approach. Intrinsic to the research process under this grant program is students visiting a national cemetery or VA grant-funded cemetery of interest more than once.

D. *Applicant Contact Information*: Must not be a toll-free number or P.O. Box address. Must be a working telephone number and physical address for grantee accessibility.

1. *Location of the administrative office* where correspondence can be sent to the Executive Director/President/Chief Executive Officer/Department Chair (no P.O. Boxes). Include complete address, city, state, zip code + four-digit extension, county and congressional district.

2. *Organization Primary Contact*: Include the name, title, phone number and email address. Note: VLGP views the organization's primary contact as assigned to the organization, not a specific grant application, and should be someone who normally signs grant agreements or makes executive decisions for the organization.

3. *Grant Contact #1*: Include the name, title, phone number and email address. Note: This contact is specific to a grant application under this NOFA and may be a Program Manager, Director, Case Manager, Grant Administrator or other individual of similar position.

V. Application Review Information

A. *Application Review*: Staff reviewers from VA and possibly other Federal agencies will assess and score all compliant applications. The applications will be ranked from highest to lowest based on application scores as explained below.

B. *Applicant Clarification*: Following the review process, VA may request clarifying information to inform funding recommendations. A request for clarification does not guarantee a grant award. If an organization does not respond by the deadline to a request for clarification, VA will remove its application from consideration.

C. *Application Scoring*: Applications will be evaluated and scored based on the follow criteria (100-point scale):

1. Team—10 possible points.
2. Student research products—15 possible points.
3. Outreach—15 possible points.
4. Instructional materials—15 possible points.
5. Extended memorialization—15 possible points.
6. Budget—15 possible points.
7. Collection of program assessment data—15 possible points.

In addition to the possible 100-point scale, applications can receive up to an additional 3 points for CPPs as noted in Section I.B. (*Priorities*).

D. *Technical Factors*: Applications will be reviewed and evaluated based on the following technical factors to determine the best value for NCA and VLGP:

1. *Team*: The team of contributing scholars must consist of at least two members from accredited institutions of higher education within the area of focus, each of whom is a faculty member who holds an advanced degree in their field and has evidence of demonstrated scholarly output. The team will designate a single point of contact.

2. *Student research products*: Applicants shall define a framework of at least two digital media products produced for educational outreach based on student-generated research. The final products must be publicly accessible examples of applied cemetery research.

3. *Outreach*: Applicants shall define how they plan to develop a framework for digital and non-digital outreach based on student research focused on VA national cemetery (or cemeteries) or VA grant-funded State, Territorial or Tribal cemetery (or cemeteries).

4. *Instructional materials*: Applicants shall include the development of at least 5 lesson plans appropriate to the

schools, grades and subjects of teachers and K–12 students in the partnership. “Lesson plan” includes a plan of instruction that reflects the State’s K–12 curriculum standards, *e.g.*, Common Core State Standards, and includes all other resources, materials and aids required for the school-based implementation of the lesson. The lesson plan product can be multiple lessons, structured around pre- and post-visit learning.

5. *Extended memorialization:* Applicants shall define how they plan to use the student research to extend memorialization of the Service members’ or Veterans’ legacy enshrined in a national cemetery or VA grant-funded cemetery of focus.

6. *Budget:* Applicants should identify all costs and proposed expenditures, to include additional compensation and honoraria (and to whom such payments would be made); equipment costs, production costs and travel costs.

7. *Collection of program assessment data:* Applicants shall design assessment instruments for their students and the K–12 students showing how this participation in this program affected students’ performance in their subject of inquiry, *e.g.*, history, film, education, American social studies, English Language Arts, art. Data should be anonymously sampled but demonstrated to be valid and reliable.

E. *Risk Assessment Evaluation:* In addition to the application scoring of technical factors, VA staff (and possibly other Federal agency staff) will evaluate the risks to the program posed by each applicant, including conducting due diligence to ensure an applicant’s ability to manage Federal funds. If VA determines to make an award, special conditions that correspond to the degree of risk assessed may be applied to the award. VA reserves the right to conduct multiple risk assessments of grantees throughout the award period. Applicants will be notified of an updated risk level and any measures that may be taken to address any heightened level of risk. In evaluating risks, VA may review and consider the following:

- Financial stability;
- Quality of management systems and ability to meet the management standards prescribed in the uniform requirements in 2 CFR part 200;
- Applicant’s record in managing previous Federal awards, grants or procurement awards, including:
 - Timeliness of compliance with applicable reporting requirements;
 - Accuracy of data reported;
 - Validity of performance measure data reported;

- Conformance to the terms and conditions of previous Federal awards; and

- If applicable, the extent to which any previously awarded amounts will be expended prior to future awards.

- Information available through Office of Management and Budget (OMB)—designated repositories of Governmentwide eligibility qualification or financial integrity information, such as:

- Federal Awardee Performance and Integrity Information System;
- Dun and Bradstreet; and
- “Do Not Pay.”

Applicants may review and comment on information available through these OMB-designated repositories, and VA will consider any comments made by the applicant.

- Reports and findings from single audits performed under subpart F—Audit Requirements, 2 CFR part 200, OMB Circular A–133 and findings of any other available audits;

- Applicant organization’s annual report;

- Publicly available information, including information from the applicant organization’s website;

- Applicant’s ability to effectively implement statutory, regulatory or other requirements imposed on award recipients; and

- Applicant’s past compliance or ability to comply with Federal procurement requirements in procuring the Project Coordinator and Investor(s) in accordance with 2 CFR 200.317–200.326.

F. *Priority Groups:* This award cycle places no priority consideration on grant applications with any specific focus, discipline or product.

G. *Disposition of Applications:* Upon review of an application and dependent on availability of funds, VA will:

- Approve the application for funding, in whole or in part, for such amount of funds, and subject to such conditions that VA deems necessary or desirable; or

- Determine that the application is of acceptable quality for funding, in that it meets minimum criteria, but disapprove the application for funding because it did not rank sufficiently high in relation to other applications to qualify for an award based on the level of funding available; or

- Disapprove the application for failure to meet the applicable selection criteria at a sufficiently high level in comparison to other applications to justify an award of funds, or for another reason as provided in the documentation of the decision; or

- Defer action on the application for such reasons as lack of funds or a need for further review.

H. *Withdrawal of Application:*

Applicants may withdraw a VLGP application submitted through www.grants.gov by submitting a written request to the VA point of contact specified in this NOFA within 15 days with a rationale for the request.

VI. Award Administration Information

A. *Selection for Funding:* VA will utilize the ranked scores of applications as the primary basis for selection, ultimately made by the delegated official who may factor in the risk assessment and clarifying information provided by the applicant.

B. *Award Notice:* The VLGP Office will announce grant awards after a complete review of all received applications. Awards will be for 12 months. The initial announcement will be made via news release which will be posted on VA’s VLGP website at: <https://www.cem.va.gov/legacy/grants.asp>. Following the initial announcement and after the application deadline, the VLGP Office will send notification letters to the grant recipients. Applicants who are not selected will be sent a declination letter.

C. *Grant Agreements:* After an applicant is approved for award, VA will draft a grant agreement to be executed by VA and the grantee. Upon execution of the grant agreement, VA will obligate the grant amount. Grantees will be subject to requirements of this NOFA, VLGP regulations (38 CFR 38.710–38.785), other Federal grant requirements under 2 CFR part 200 and the grantee’s VLGP application.

D. *Administrative and National Policy:* VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor grant programs and outcomes associated with the services provided under VLGP.

E. *Payment:* Grant awards will be paid in a method that is in accordance with section 38.760(a). All grantees must register in the Health and Human Services Payment Management Services (HHS–PMS) Program Support Center at: Home | Payment Management Services (psc.gov). Funds will be disbursed through HHS–PMS on initial obligation and halfway through the grant period (*i.e.*, the initial payment for the 1st 6 months and the subsequent payment for the 2nd 6 months). Awardees will be required to support their request for funding based on the project budget.

F. *Compliance Review:* As needed, VA may conduct site visits to grantee locations to review grantee accomplishments and management

control systems. In addition, VA may conduct as many inspections as needed of grantee records to determine compliance. All visits and evaluations will be performed with minimal disruption to the grantee to the extent practicable.

G. Reporting:

1. *Annual report:* All grantees must submit to VA, not later than 60 days after the last day of the grant period, a final report. The final report must include: a program evaluation, proof of meeting VA objectives as outlined in VLGP's mission and a summary of the effectiveness of the completed proposal.

2. *Additional reporting:* VA may request additional information, records and reports to allow VA to assess program effectiveness.

H. *Recovery of Funds:* VA may recover from the grantee any funds that are not used in accordance with the grant agreement. If VA decides to recover funds, VA will issue to the grantee a notice of intent to recover grant funds, and the grantee will then

have 30 days to submit documentation demonstrating why the grant funds should not be recovered. After review of all submitted documentation, VA will determine whether action will be taken to recover the grant funds. When VA decides to recover grant funds from the grantee, VA will stop further payments of grant funds until the grant funds are recovered and the condition that led to the decision to recover grant funds has been resolved.

I. *Financial Management:* The grantee shall conform to the Single Audit Act Amendments of 1996, as implemented by 2 CFR part 200. All grantees must use a financial management system that complies with 2 CFR part 200. Grantees must meet the applicable requirements of OMB's regulations on Cost Principles at 2 CFR part 200.

J. *Availability of Grant Funds:* Federal financial assistance will become available subsequent to the effective date of the grant as set forth in the grant agreement. Recipients may be

reimbursed for costs resulting from obligations incurred before the effective date of the grant, if such costs are authorized by VA within this NOFA or the grant agreement or subsequently by VA in writing and otherwise would be allowable as costs of the grant under applicable guidelines, regulations and terms and conditions of the grant agreement.

Signing Authority: Denis McDonough, Secretary of Veterans Affairs, approved this document on March 27, 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.

Luvenia Potts,

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

[FR Doc. 2023-06608 Filed 3-29-23; 8:45 am]

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FEDERAL REGISTER

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March 30, 2023

Part II

The President

Memorandum of March 24, 2023—Conserving the Natural and Cultural Heritage of the Pacific Remote Islands

Presidential Documents

Title 3—

Memorandum of March 24, 2023

The President

Conserving the Natural and Cultural Heritage of the Pacific Remote Islands

Memorandum for the Secretary of the Interior [and] the Secretary of Commerce

In the middle of the Pacific Ocean lie Howland, Baker, Jarvis, and Wake Islands; Johnston and Palmyra Atolls; and Kingman Reef, whose surrounding reefs, seamounts, and ocean are filled with some of the most diverse and remarkable marine life on the planet, including sharks, rays, marlin, tuna, giant clams, hawksbill turtles, ancient coral forests, and whales. Uninhabited today, for centuries wayfinders of Pacific Island Indigenous Peoples visited these islands while navigating through the expanse of the vast Pacific Ocean.

For years, Native Hawaiian and Pacific Island Indigenous communities, conservation advocates, and scientists have advocated for the protection of United States waters around these remote islands from industrial fishing, oil drilling, and mining. Through Proclamation 8336 of January 6, 2009 (Establishment of the Pacific Remote Islands Marine National Monument), the President partially fulfilled these requests by establishing the Pacific Remote Islands Marine National Monument, which permanently protected the islands, atolls, and emerged reef and 50 nautical miles of water around each. Through Proclamation 9173 of September 25, 2014 (Pacific Remote Islands Marine National Monument Expansion), the President took a further step to expand the Monument to include 200 nautical miles—the full extent of the United States Exclusive Economic Zone—around Jarvis and Wake Islands and Johnston Atoll. In addition, some areas within the Monument are designated as National Wildlife Refuges.

The areas around Howland and Baker Islands, Palmyra Atoll, and Kingman Reef that remain unprotected include ecologically significant deep-water habitats and an associated array of seamounts with exceptional value for their biodiversity; spawning and feeding grounds for skipjack, yellowfin, and bigeye tuna species; and multiple apex predators that play a vital role in maintaining ecological balance and resilience of the ecosystem. Research continues to reveal the importance of these relatively unexplored habitats to the health, nutrient cycling, and carbon sequestration of the ocean.

To further ensure the protection of this unique and fragile area, support more abundant fisheries in surrounding areas, conserve the capacity of a healthy ocean to capture and store greenhouse gases that would otherwise enter the atmosphere, and appropriately honor ancestral, historical, and cultural connections to this and other Pacific conservation areas, and by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. *Initiating National Marine Sanctuary Designation.* (a) Within 30 days of the date of this memorandum, the Secretary of Commerce should consider initiating designation of a National Marine Sanctuary pursuant to the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.*, to provide the most comprehensive and lasting protections to the significant natural and cultural resources of the submerged lands and waters surrounding the seven islands, atolls, and reefs of the Pacific Remote Islands Marine National Monument—both within and outside the Monument boundary, to the full

extent of the seaward limit of the United States Exclusive Economic Zone—including marine life, shoals, seamounts, reefs, banks, and sediments high in minerals and sequestered carbon dioxide for the benefit of present and future generations.

(b) In any proposal of a National Marine Sanctuary designation, as described in subsection (a) of this section, the Secretary of Commerce shall identify the anticipated timeline for the completion of the National Marine Sanctuary designation process as expeditiously as possible, consistent with applicable law.

(c) For any final designation, the Secretary of Commerce shall establish a National Marine Sanctuary advisory council and pursue, as appropriate, opportunities to collaborate with Indigenous Peoples with ancestral, historical, and cultural connections to the area on planning and management.

Sec. 2. *Collaboration on Conservation.* The Secretary of the Interior and the Secretary of Commerce (Secretaries) shall collaborate, as appropriate, regarding conservation of the lands and surrounding waters of the Pacific Remote Islands.

Sec. 3. *Collaborative Process on Naming.* In recognition of the deep and enduring cultural significance of this region to the oceanic cultures of the Pacific, the Secretaries shall develop and implement a process to collaborate with Indigenous language experts, Native Hawaiian Organizations, and other representatives from Indigenous Peoples with ancestral, historical, and cultural connections to the area to develop names and naming conventions reflecting ancestral, historical, and cultural connections for the National Wildlife Refuges and any National Marine Sanctuary designated in the area of the Pacific Remote Islands Marine National Monument and for the islands, atolls, reefs, and other natural features in the area. Within 2 years of the date of this memorandum and through the process they develop, the Secretaries shall identify appropriate names for the National Wildlife Refuges within the Pacific Remote Islands Marine National Monument and any National Marine Sanctuary that is designated in the area, provide a recommendation to the President on the potential renaming of the Pacific Remote Islands Marine National Monument, and identify appropriate naming conventions and processes for naming natural features within the boundaries of the Monument and any National Marine Sanctuary that is designated in the area.

Sec. 4. *Recommendations on Appropriate Cultural Recognition.* Within 2 years of the date of this memorandum, the Secretaries shall engage with Native Hawaiian Organizations and relevant Pacific Island Indigenous communities and coordinate with other executive departments and agencies, as appropriate, to provide the President with recommendations on honoring the heritage, traditional practices, ancestral pathways, and stopping points for Pacific Island voyagers and on providing posthumous recognition for the Hui Panalā'au, who were Native Hawaiians sent to the Pacific Remote Islands between 1935 and 1942, many of whom were young men from the Kamehameha Schools.

Sec. 5. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

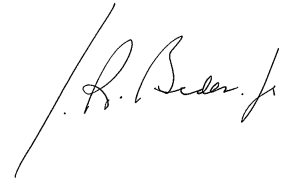
- (i) the authority granted by law to an executive department or agency, or the head thereof;
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals; or
- (iii) the provisions of Proclamation 8336 and Proclamation 9173, including those related to the rights, authorities, or exemptions for the Department of Defense and actions of the Armed Forces.

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

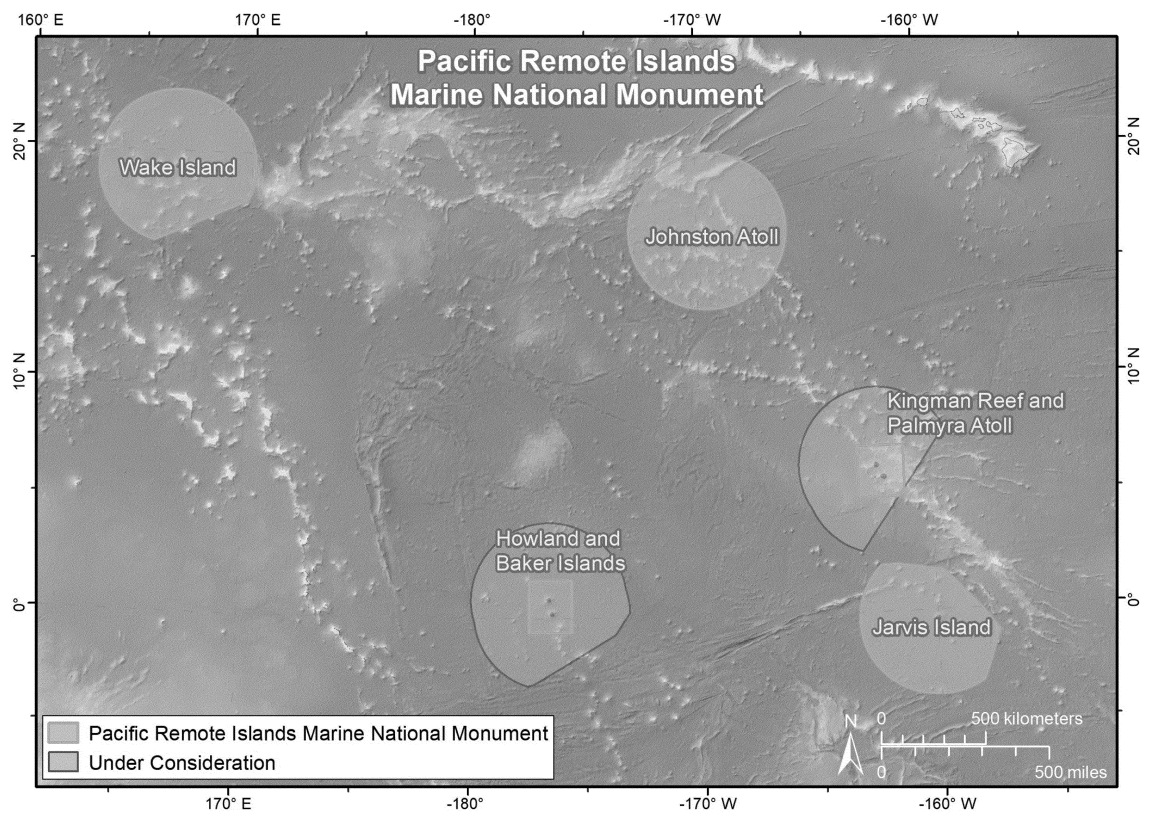
(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by

any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Commerce is hereby authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, March 24, 2023



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Filed 3-29-23; 11:15 a.m.]
Billing code 3510-07-C



FEDERAL REGISTER

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Part III

The President

Proclamation 10536—Honoring the Victims of the Tragedy in Nashville, Tennessee

Notice of March 29, 2023—Continuation of the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities

Notice of March 29, 2023—Continuation of the National Emergency With Respect to South Sudan

Presidential Documents

Title 3—

Proclamation 10536 of March 27, 2023

The President

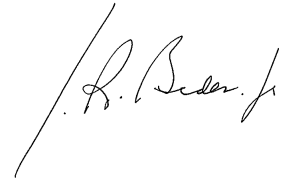
Honoring the Victims of the Tragedy in Nashville, Tennessee

By the President of the United States of America

A Proclamation

As a mark of respect for the victims of the senseless acts of violence perpetrated on March 27, 2023, in Nashville, Tennessee, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, March 31, 2023. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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



Presidential Documents

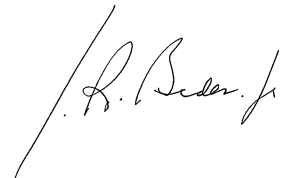
Notice of March 29, 2023

Continuation of the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities

On April 1, 2015, by Executive Order 13694, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the increasing prevalence and severity of malicious cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States. On December 28, 2016, the President issued Executive Order 13757 to take additional steps to address the national emergency declared in Executive Order 13694.

These significant malicious cyber-enabled activities continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared on April 1, 2015, must continue in effect beyond April 1, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13694.

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



THE WHITE HOUSE,
March 29, 2023.

Presidential Documents

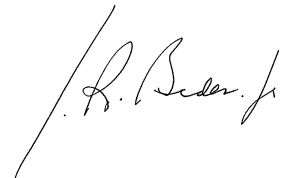
Notice of March 29, 2023

Continuation of the National Emergency With Respect to South Sudan

On April 3, 2014, by Executive Order 13664, 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 and foreign policy of the United States constituted by the situation in and in relation to South Sudan, which has been marked by activities that threaten the peace, security, or stability of South Sudan and the surrounding region, including widespread violence and atrocities, human rights abuses, recruitment and use of child soldiers, attacks on peacekeepers, and obstruction of humanitarian operations.

The situation in and in relation to South Sudan continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on April 3, 2014, must continue in effect beyond April 3, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13664.

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



THE WHITE HOUSE,
March 29, 2023.

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