FEDERAL REGISTER

Vol. 88 Monday,
No. 63 April 3, 2023

Pages 19547–19796

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 88 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Contents

Federal Register

Vol. 88, No. 63

Monday, April 3, 2023

CFR PARTS AFFECTED IN THIS ISSUE

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

14 CFR
25.....19547

23 CFR
Proposed Rules:
661.....19571

30 CFR
Proposed Rules:
585.....19578

33 CFR
Proposed Rules:
165.....19579

38 CFR
Proposed Rules:
46.....19581

43 CFR
Proposed Rules:
1600.....19583
6100.....19583

47 CFR
73.....19549

49 CFR
Proposed Rules:
216.....19730
231.....19730
238.....19730

50 CFR
17.....19549
648.....19559

Rules and Regulations

Federal Register
Vol. 88, No. 63
Monday, April 3, 2023

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–1441; Special Conditions No. 25–817–SC]

Special Conditions: Blackhawk Aerospace Technologies, Textron Model 500 Series Airplanes; Rechargeable Lithium Batteries and Battery System Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Textron Model 500/550/S550/560/560XL/560XLS airplanes. These airplanes, as modified by Blackhawk Aerospace Technologies (Blackhawk), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is electronic GI 275 Standby Instruments containing rechargeable lithium-ion batteries. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Blackhawk on April 3, 2023. Send comments on or before May 18, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2022–1441 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will post all comments received without change to *https://www.regulations.gov/,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information: 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 these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, 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 the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Docket: Background documents or comments received may be read at *https://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Aircraft Systems Section, AIR–623, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3160; email *nazih.khaouly@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds, pursuant to § 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments, and will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these special conditions based on the comments received.

Background

On February 24, 2020, Blackhawk applied for a supplemental type certificate to install rechargeable lithium batteries and battery systems, in the Textron Model 500 series airplanes, for electronic GI 275 Standby Instruments. The Textron Model 500 series airplane, approved under Type Certificate No. A22CE, is a twin-engine, transport-category airplane with maximum seating capacity for 7 to 12 passengers and a maximum takeoff weight of between 10,850 to 20,330 pounds, depending upon model.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Blackhawk must show that the Textron

Model 500 series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A22CE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Textron Model 500 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Textron Model 500 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Textron Model 500 series airplanes will incorporate the following novel or unusual design feature:

Electronic GI 275 Standby Instruments containing rechargeable lithium-ion batteries.

Discussion

Rechargeable lithium batteries and battery systems are considered to be a novel or unusual design feature in transport category airplanes, with respect to the requirements in § 25.1353. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on transport category airplanes. These batteries and battery systems introduce higher energy levels into airplane systems through new chemical compositions in various battery-cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Special Condition 1 requires that each individual cell within a battery and battery system be designed to maintain safe temperatures and pressures. Special Condition 2 addresses these same issues but for the entire battery system.

Special Condition 2 requires that the batteries and battery system be designed to prevent propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure from one cell to adjacent cells.

Special Conditions 1 and 2 are intended to ensure that the cells and battery system are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special Conditions 3, 7, and 8 are self-explanatory.

Special Condition 4 clarifies that the flammable-fluid fire-protection requirements of § 25.863 apply to rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Rechargeable lithium batteries contain electrolyte that is a flammable fluid.

Special Condition 5 requires each rechargeable lithium battery and battery system installation to not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

Special Condition 6 requires each rechargeable lithium battery and battery system installation to have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells. The means of meeting special conditions 5 and 6 may be the same, but they are independent requirements addressing different hazards. Special Condition 5 addresses corrosive fluids and gases, whereas special condition 6 addresses heat.

Special Condition 9 requires rechargeable lithium batteries and battery systems to have ''automatic'' means, for charge rate and disconnect, due to the fast acting nature of lithium battery chemical reactions. Manual intervention would not be timely or effective in mitigating the hazards associated with these batteries.

These special conditions apply to all rechargeable lithium batteries and battery system installations in lieu of § 25.1353(b)(1) through (4) at amendment 25–123, or § 25.1353(c)(1) through (4) at earlier amendments. Those regulations will remain in effect for other battery installations on these airplanes.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Textron Model 500 series airplanes. Should Blackhawk apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A22CE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Textron Model 500 series airplanes, as modified by Blackhawk.

Rechargeable Lithium Battery and Battery System Installations

In lieu of § 25.1353(b)(1) through (4) at amendment 25–123, or § 25.1353(c)(1) through (4) at earlier amendments, each rechargeable lithium battery and battery system installation must:

(1) Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

(2) Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure, and automatically control the charge rate of each cell to protect

against adverse operating conditions, such as cell imbalance, back charging, overcharging and overheating.

(3) Not emit explosive or toxic gases, either in normal operation or as a result of its failure that may accumulate in hazardous quantities within the airplane.

(4) Meet the requirements of § 25.863.

(5) Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more-severe failure condition.

(6) Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

(7) Have a failure sensing and warning system to alert the flight crew if its failure affects safe operation of the airplane.

(8) If its function is required for safe operation of the airplane, have a monitoring and warning feature that alerts the flight crew when its charge state falls below acceptable levels.

(9) Have a means to automatically disconnect from its charging source in the event of an over-temperature condition, cell failure or battery failure.

Note: The battery system consists of the batteries, battery charger, and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a battery and battery system are referred to as a battery.

Issued in Kansas City, Missouri, on March 28, 2023.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2023–06729 Filed 3–31–23; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 23–262; MB Docket No. 22–373; RM–11933; FR ID 134378]

Radio Broadcasting Services; South Padre Island, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the FM Table of Allotments, of the Commission's rules, by adding Channel 288A at South Padre Island, Texas. A staff engineering analysis indicates that Channel 288A can be allotted to South Padre Island, Texas, consistent with the minimum distance separation requirements of the Commission's rules (Rules), with a site restriction of 11 km (7 miles) south of the community. The reference coordinates are 26–01–30 NL and 97–09–15 WL.

DATES: Effective May 12, 2023.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Federal Communications Commission's (Commission) Report and Order, adopted March 28, 2023 and released March 28, 2023. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs/.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

The Report and Order in this proceeding substituted Channel 288A for vacant Channel 237A at South Padre Island, Texas to accommodate the hybrid modification application for Station KRIX(FM), Port Isabel, Texas resulting in the public interest because it would enhanced service for Station KRIX(FM), Port Isabel, Texas. Channel 237A at South Padre Island, Texas is not currently listed in the FM Table of Allotments but is considered a vacant allotment resulting from the license cancellation of FM station DKZSP, Fac. ID No. 56473, South Padre Island, Texas. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.202, amend table 1 to paragraph (b), under Texas, by adding in alphabetical order an entry for ''South Padre Island'' to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

U.S. States	Channel No.
Texas	
* * * * *	
South Padre Island	288A
* * * * *	

* * * * *

[FR Doc. 2023–06780 Filed 3–31–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2022–0134; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BG93

Endangered and Threatened Wildlife and Plants; Significant Portion of Its Range Analysis for the Northern Distinct Population Segment of the Southern Subspecies of Scarlet Macaw

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final determination; notification of additional analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened status under the Endangered Species Act of 1973 (Act), as amended, for the northern distinct population segment (DPS), of the southern subspecies of scarlet macaw (*Ara macao macao*). Scarlet macaws are brilliantly colored parrots native to Mexico and Central and South America. This action affirms the 2019 listing of the scarlet macaw under the Act.

DATES: This determination is effective March 30, 2023.

ADDRESSES: Supporting materials for this action, including comments we received on our November 2, 2022, **Federal Register** document (87 FR 66093) are available in Docket No. FWS–HQ–ES–2022–0134 on *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel London, Chief, Branch of Delisting and Foreign Species, Ecological Services Program, 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:

Background

Scarlet macaws (*Ara macao*) have the broadest range of all the macaw species (Ridgely 1981, p. 250). The range of the species extends from Mexico, south through Central America, and into the Amazon of South America to central Bolivia and Brazil. In Mexico and Central America, the scarlet macaw's historical range and population have been reduced and fragmented over the last several decades primarily as a result of habitat destruction and collection of wild birds for the pet trade (Vaughan et al. 2003, pp. 2–3; Collar 1997, p. 421; Wiedenfeld 1994, p. 101; Snyder et al. 2000, p. 150). The majority (83 percent) of the species' range and population lies within the Amazon Biome of South America (BLI 2011a, unpaginated; BLI 2011b, unpaginated; BLI 2011c, unpaginated). In South America, the scarlet macaw occurs over much of its historical range within the Amazon and occurs in small areas outside the Amazon, such as west of the Andes Mountains in Colombia.

The scarlet macaw is classified as two subspecies, the northern subspecies (*A. macao cyanoptera*) and southern subspecies (*A. macao macao*) (Schmidt 2013, pp. 52–53; Schmidt et al. 2019, p. 735). The northern subspecies of scarlet macaw ranges from Mexico, south through Central America in Guatemala, Nicaragua, Honduras, and down the Atlantic slope of Costa Rica, as well as on Isla Coiba in Panama. The southern subspecies of scarlet macaw occurs along the Pacific slope of Costa Rica and southward through mainland Panama and into the remainder of the species' range in South America. The subspecies are separated by the central cordilleras in Costa Rica (Schmidt 2013, pp. 52–53; Schmidt et al. 2019, p. 744).

On February 26, 2019, we published in the **Federal Register** a final rule under the Act at 84 FR 6278 (hereafter, ''the 2019 rule''). The 2019 rule revised the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (at 50 CFR 17.11(h)) to add the northern subspecies of scarlet macaw (*A. m. cyanoptera*) as endangered, the northern DPS of the southern subspecies (*A. m. macao*) as threatened (hereafter, ''the northern DPS''), and the southern DPS of the southern subspecies (*A. m. macao*) and subspecies crosses (*A. m. cyanoptera* and *A. m. macao*) as threatened due to similarity of appearance. The 2019 rule also added protective regulations to 50 CFR 17.41 pursuant to section 4(d) of the Act for the northern and southern DPSs of the southern subspecies and for subspecies crosses. For a more thorough discussion of the taxonomy, life history, distribution, and the determination of listing status for scarlet macaws under the Act, please refer to the Species Information section in the 2019 rule.

This Action

In the 2019 rule, we found the northern DPS of the southern subspecies of scarlet macaw was not currently in danger of extinction but likely to become in danger of extinction within the foreseeable future throughout all of its range. At that time, we followed 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'' (hereafter, Final Policy, 79 FR 37578; July 1, 2014), which provided that if the Services determined that if a species is threatened throughout all of its range, the Services would not analyze whether the species is endangered in a significant portion of its range. Therefore, we did not conduct a ''significant portion of its range'' analysis for the scarlet macaw in the northern DPS and determine whether it met the definition of an endangered species as a result.

However, in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. Jan. 28, 2020) (*Everson*), the Court vacated that provision of the Final Policy. This decision came after the threatened determination for scarlet macaw published in the 2019 rule. Therefore, we have since reconsidered our ''significant portion of its range'' analysis for the scarlet macaw in the northern DPS based on the plain language of the Act and the implications of *Everson.* As part of this process, we published a notification of additional analysis in the **Federal Register** on November 2, 2022 (87 FR 66093). We conducted our ''significant portion of its range'' analysis in line with what we submitted to and was approved by the Court in *Friends of Animals* v. *Williams* (No. 1:21–cv–02081–RC, Doc. 22).

Summary of Comments

In the November 2, 2022, **Federal Register** document, we requested any interested party to submit comments that pertain to how we should reassess the ''significant portion of its range'' for the northern DPS in light of the plain language of the Act and the Court's order in *Everson.* We reviewed all comments received for substantive issues. We address four substantive comments by the one commenter below.

Comment (1): One commenter stated that the Service should incorporate Schmidt et al. 2019 in the ''significant portion of its range'' analysis. Schmidt et al. 2019 describes the genetic divergences between subspecies of the scarlet macaw (*Ara macao*). The commenter believed that this study warranted the Service's consideration in its ''significant portion of its range'' analysis.

Response: We note that this 2019 study was published after the publication of the 2019 rule and would be information considered after our final rule became effective. We also note that we requested public comments only on how recent case law regarding the Service's ''significant portion of its range'' analysis based on the plain language of the Act and the implications of *Everson* could affect the 2019 rule. Any public comment that is beyond the scope of our request is not relevant. Nevertheless, in the 2019 rule, we incorporated information in Schmidt 2013, which includes the same information as Schmidt et al. 2019 in terms of genetic divergences between the subspecies of scarlet macaw, *Ara cyanoptera* and *A. macao.* Schmidt et al. 2019 published their research in the International Journal of Avian Science, Ibis (2020), 162, 735–748. Schmidt 2013 is research submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the Graduate School of Arts and Sciences at Columbia University (2013), 188pp. The information in both Schmidt et al. 2019 and Schmidt 2013 conclude the northern subspecies, *A. m. cyanoptera,* ranges from Mexico to northern Costa Rica and the southern subspecies, *A. m. macao,* ranges from lower Central America to South America (Schmidt *et al.* 2019, p. 742). We incorporated the genetic analysis of the two subspecies in the 2019 rule. Additionally, we incorporated the analysis of the unique trans-Andean populations of scarlet macaws, which are the same populations within the northern DPS that include the populations on the

Pacific slope of Costa Rica, mainland Panama, and northwest Colombia. Therefore, we included the best available information regarding the genetic status of the two subspecies of scarlet macaw, and already considered the genetic information in the 2019 study, when we issued the 2019 rule.

Comment (2): One commenter stated that if the Service does conclude that the northern DPS is endangered in a significant portion of its range, then it must list the entire northern DPS as endangered. The commenter stated that there is no basis to list the northern DPS found in certain portions of its range as endangered but to list the northern DPS found in other portions of its range as threatened. As support, the commenter cited *Alsea Valley Alliance* v. *Evans,* 161 F. Supp. 2d 1154, 1162 (D. Or. 2001) (''Listing distinctions below that of a subspecies or a DPS of a species are not allowed under the ESA.'').

Response: We agree. In addition to *Alsea Valley Alliance,* our listing determination and analysis for chimpanzees in 2015 provides additional information and a thorough discussion of this issue (80 FR 34499; June 16, 2015). However, as discussed further below, the Service does not conclude that the northern DPS is endangered in a significant portion of its range.

Comment (3): One commenter stated that just because the populations of the northern DPS may be stable in Costa Rica, does not mean that the northern DPS is not endangered in other portions of its range or that those other portions of its range are not significant, as an individual population must be considered independently from the whole northern DPS. Citing to the Service's findings in the 2019 rule, the commenter asserts the northern DPS populations in both Panama and northwest Columbia are endangered and that both populations are ''significant—biologically, genetically, and in comparison to the overall range of the northern DPS.'' Thus, the commenter concludes that we should find that the northern DPS is endangered in a significant portion of its range.

Response: We agree with the commenter that in addition to the population in Costa Rica, the population in Panama and the population in northwest Columbia are the appropriate populations to consider in our ''significant portion of its range'' analysis for whether they are endangered and significant. As discussed further below we have considered whether either of these populations is significant biologically, genetically, and in comparison to the overall range of the northern DPS. To determine whether a portion is ''significant,'' we considered how the portion contributes to the viability of the northern DPS. We considered the northern DPS' population sizes, geographic distribution, and threats to the northern DPS, including the northern DPS' response to the threats and cumulative effects. We also considered whether the effects of the threats on the northern DPS are greater in any biologically meaningful portion of the northern DPS' range than in other portions such that the northern DPS is in danger of extinction now in that portion. We explain our rationale that the northern DPS is not endangered in a significant portion of its range in more detail below.

Comment (4): A commenter asserted that the Service never determined that the northern DPS migrates between Costa Rica and either Panama or northwest Colombia.

Response: Scarlet macaws have been shown to make small and larger range movements to areas with greater food and/or nesting resources. Parrots and macaws can travel tens to hundreds of kilometers (km) and are able to exploit resources in a variety of habitats within the larger landscape (Lee 2010, pp. 7–8, citing several authors; Brightsmith 2006, unpaginated; Collar 1997, p. 241). Radio telemetry studies were conducted on scarlet macaws in Guatemala, Belize, and Peru, and preliminary results showed variation in the distances over which scarlet macaws range but suggest home ranges of individuals cover hundreds of square kilometers (Boyd and Brightsmith 2011, in litt.; Boyd 2011, pers. comm.). Of nine scarlet macaws tracked over periods of 3 to 9 months, the maximum extent of an individual's range (farthest distance between two points at which individuals were located with radio telemetry) varied between 25 km to 165 km, with most moving between 25 km and 50 km (Boyd and Brightsmith 2011, in litt.; Boyd 2011, pers. comm.). Additionally, scarlet macaws are moving within Costa Rica between the Área de Conservación Pacífico Central (ACOPAC) and the Southern Pacific Costa Rica (Área de Conservación Osa (ACOSA)) populations and the scarlet macaw is basically continuous between the two populations in Costa Rica (see *Scarlet Macaw in the Northern DPS,* below). However, we are not aware of information on the movements or migration within the northern DPS of scarlet macaws between Costa Rica and Panama, Panama and Colombia, or Costa Rica and Colombia.

Scarlet Macaw in the Northern DPS

The scarlet macaw inhabits various habitat types throughout its range, including tropical humid evergreen forest, deciduous and humid forest, intact and partially cleared lowland rainforest, mixed pine and broad-leaved woodlands, open areas and edges with scattered stands of tall trees, gallery forest, mangroves, and savannas, often near rivers (Juniper and Parr 1998, p. 425; Wiedenfeld 1994, p. 101; Forshaw 1989, p. 407; Meyer de Schauensee and Phelps, Jr. 1978, p. 99). Scarlet macaws prefer lowland, humid habitats that are dependent on the availability of fresh water (Schmidt et al. 2019, p. 744; Schmidt 2013, p. 175). The species generally occurs from sea level to about 500 meters (m) (1,640 feet (ft)) elevation but has been reported ranging up to 1,500 m (4,921 ft) in Central America (Juniper and Parr 1998, p. 425; Vaughan 1983, in Vaughan et al. 2006, p. 919).

Generally, the species is geographically constrained between central highlands and either the Pacific or Atlantic Coasts. In the northern DPS, the range of the scarlet macaw occurs south of the central cordilleras of Costa Rica, along the Pacific slope, and south through Panama to northwest of the Andes Mountains in Colombia. Scarlet macaws are confined to the tropical forests in lower Central America by the central highlands and the Pacific Ocean. Similarly, in Colombia scarlet macaws inhabit moist tropical ecosystems along the mid- to lower-Magdalena River Valley, bounded by the Central and Oriental Cordilleras of the Northern Andes (Hilty and Brown 1986, p. 200). The geographical extent of these lowland habitats covers an area markedly smaller than either upper Central America or the Amazon Basin, with fewer major sources of fresh water (Schmidt et al. 2019, p. 745).

The total population of scarlet macaws in the northern DPS is approximately 1,000 to 2,000 birds (see table 1, below). Populations include: (1) Two populations on the Pacific slope in Costa Rica—the ACOPAC and the ACOSA populations, (2) very small populations in the Chiriquí province and at the southern end of the Azuero Peninsula of Veraguas, near Cerro Hoya National Park in Panama, and (3) population(s) in northwest Colombia west of the Andes Mountains, although we have minimal information on the population size or distribution in Colombia west of the Andes Mountains.

The Costa Rica populations account for almost all the total known population of the northern DPS of the southern subspecies of scarlet macaw

(see table 1). The ACOPAC population is estimated to contain approximately 450 birds (Arias et al. 2008, in McReynolds 2011, in litt.). The estimates for the ACOSA population are between 800 to 1,200 birds (Dear et al. 2010, p. 17) but possibly up to 2,000 birds (Guzman 2008, p. 17). However, combining plausible subpopulation estimates, the total population of scarlet macaws on the Pacific slope of Costa Rica that includes both the ACOPAC and ACOSA populations was estimated at approximately 1,800 birds (McReynolds 2011, in litt., unpaginated).

By all indications the scarlet macaw population in ACOPAC has been expanding from the traditional stronghold in and around Carara National Park (Brightsmith 2016, in litt., p. 11). Since 2013, scarlet macaws in groups of up to 30, along with pairs during the height of the breeding season, were regularly observed south of Carara, up and down the coast and up to 70 km (43 mi) south of the point where the census in Carara is usually conducted. In addition, scarlet macaws from the areas immediately to the northwest of Carara have been reported. Scarlet macaws occur in Palo Verde National Park, in the surrounding areas, and in patchwork forested habitats in between. The species may frequently pass through these areas and is not present at high densities. Group sizes are small, and it is unclear if the birds are escaped or released birds from a nearby lodge or natural dispersers (Brightsmith 2016, in litt., p. 14). Regardless, because there have been scattered sightings of scarlet macaws from Palo Verde National Park south to Carara National Park and throughout western Guanacaste, the birds near Palo Verde are no longer considered completely isolated (Brightsmith 2016, in litt., p. 14). However, evidence to support successful establishment of populations north of Carara is weak (Brightsmith 2016, in litt., p. 13).

The best available information suggests that the ACOSA population is simultaneously expanding up the coast. Birds were reported to occur in multiple areas between the ACOPAC and ACOSA populations, in Manuel Antonio National Park and Uvita, as well as Dominical that is the approximate midpoint between the ACOPAC and ACOSA populations. Thus, the scarlet macaw is basically continuous from the Osa Peninsula (ACOSA population) to Carara National Park (ACOPAC population) (Brightsmith 2016, in litt., p. 13). Additionally, 85 percent of residents interviewed in 2005 believed scarlet macaws were more abundant than 5 years prior in ACOSA, suggesting this population may be increasing (Dear et al. 2010, p. 10). Sightings of scarlet macaws between the ACOPAC and ACOSA populations may represent individuals from either of the populations, and it is difficult to distinguish between expansion of the ACOPAC population to the south and the expansion of the ACOSA population to the north (Brightsmith 2016, in litt., p. 11).

In Panama, the scarlet macaw was once described as almost extinct on the mainland but abundant and occurring in substantial numbers on Isla Coiba, a one-time penal colony where human settlement and most hunting was prohibited (Ridgely 1981, p. 253). The current population of scarlet macaws in Panama is estimated at less than 200 birds, with most of the population occurring on Isla Coiba and less than 25 birds estimated to occur on the mainland (Keller and Schmitt 2008, in Brightsmith 2012, in litt. and McReynolds 2011, in litt., unpaginated). Scarlet macaws on Isla Coiba are considered the northern subspecies, *A. m. cyanoptera* (Schmidt 2013, pp. 69–73; Schmidt et al. 2019, p. 740), and are not part of the northern DPS of the southern subspecies of scarlet macaw. Therefore, the very small number of scarlet macaws existing on mainland Panama are the only scarlet macaws in Panama that are considered the northern DPS of the southern subspecies and part of this analysis.

Sporadic sightings of scarlet macaws have occurred over the last few decades in the western border region of Panama and Costa Rica, in the area of the upper Río Corotu (or Río Bartolo Arriba) near Puerto Armuelles, and near Querevalo, in the Chiriquí province (Burica Press 2007, unpaginated; McReynolds 2011, in litt., unpaginated; Brightsmith in litt. 2016, p. 17; Sullivan et al. 2009, unpaginated). Scarlet macaws have been successfully reintroduced in Tiskita, Costa Rica, which is in the western border region of Costa Rica and Panama (Tiskita Jungle Lodge 2018, unpaginated). Therefore, it is uncertain if the birds that occur in the western border region of Panama are wild or the reintroduced birds dispersing south from Tiskita, Costa Rica (Brightsmith 2016, in litt., p. 17). However, with the successful reintroduction of scarlet macaws at Tiskita, which has resulted in a viable population, scarlet macaws are established at this location (Tiskita Jungle Lodge 2018, unpaginated). Additionally, a small, but unknown number of scarlet macaws occur on the southern end of Panama in the Azuero Peninsula of Veraguas, near Cerro Hoya National Park, Tonosi Forest Reserve, and farther to the east (Brightsmith 2016, in litt., p. 17; Sullivan et al. 2009, unpaginated; Rodriguez and Hinojosa 2010, in McReynolds 2011, in litt., unpaginated).

In northwest Colombia, scarlet macaws are believed to occur in the Magdalena and Cauca River valleys in tropical ecosystems bounded by the northern Andes Mountains (Hilty and Brown 1986, p. 200; Forshaw 1989, p. 407). They have been reported as probably close to extinction in the Magdalena Valley, Cauca Valley, and north (Donegan 2013, in litt.; Ellery 2013, in litt.; McMullen 2010, p. 60). However, they may occur in very low numbers in the more remote and inaccessible parts of the region, but its status is not clear. Therefore, we are aware of little information on the population or distribution of scarlet macaws within northwest Colombia.

TABLE 1—ESTIMATED POPULATION SIZE OF SCARLET MACAW IN THE NORTHERN DPS

[Scarlet Macaw (*Ara macao macao*) Northern DPS]

Population range country	Population name	Population estimates	
Costa Rica	Central Pacific Conservation Area—Área de Conservación Pacífico Central (ACOPAC).	~450	Plausible estimate of total population in Costa Rica ~1,800.
Costa Rica	Osa Conservation Area—Área de Conservación Osa (ACOSA)	~800–1,200, potentially up to 2,000.	

TABLE 1—ESTIMATED POPULATION SIZE OF SCARLET MACAW IN THE NORTHERN DPS—Continued

[Scarlet Macaw (*Ara macao macao*) Northern DPS]

Population range country	Population name	Population estimates
Panama (mainland)	Cerro Hoya National Park	<25
Colombia	Northwest Colombia	unknown
Total Population Size of *A. m. macao;* Northern DPS		1,000–2,000

Primary Factors Affecting the Scarlet Macaw in the Northern DPS

The two primary threats to scarlet macaws are the loss of forest habitat and collection of wild birds for the pet trade (Iñigo-Elias in litt. 1997, in Snyder et al. 2000, p. 150; Guedes 2004, p. 280). The primary cause of forest loss is conversion to agriculture for crops and pasture, although other human activities such as construction of infrastructure, selective logging, fires, oil and gas extraction, and mining also contribute to the loss of forest cover within the range of the species (Blaser et al. 2011, Latin America and the Caribbean, pp. 262–402; Boucher et al. 2011, entire; Clark and Aide 2011, entire; FAO 2011a, pp. 17–18; May et al. 2011, pp. 7–13; Pacheco 2011, entire; Government of Costa Rica 2010, pp. 38–39; Belize Ministry of Natural Resources and Environment 2010, pp. 40–45; Armenteras and Morales 2009, pp. 133–145, 176–191; Kaimowitz 2008, p. 487; Mosandl et al. 2008, pp. 38–40; Nepstad et al. 2008, entire; Foley et al. 2007, pp. 26–27; Fearnside 2005, pp. 681–683).

Historically, large areas of forest have been removed throughout the species' range, particularly in Mexico and Central America, and any large tracts of forest that remain are fragmented and are mostly isolated because they are cut off from each other (Bray 2010, p. 93). Deforestation continues throughout much of the scarlet macaw's range, including in the northern DPS, and is a threat to the species because it eliminates the species' habitat by removing trees that support the species' essential needs for nesting, roosting, and food. Scarlet macaws require a large range and a variety of food resources. Thus, large-scale land conversion presents a generalized threat to scarlet macaw nest sites, foraging areas, and migration corridors (Schmidt 2013, p. 173). Scarlet macaws are dependent on larger, older trees that have large nesting cavities. Additionally, they primarily forage in the forest canopy, and are relatively general in their feeding habits. Abundance may fluctuate because they may move to areas with greater resource availability, influencing local and seasonal abundance (Lee 2010, p. 7; Cowen 2009, pp. 5, 23, citing several sources; Tobias and Brightsmith 2007, p. 132; Brightsmith 2006, unpaginated; Renton 2002, p. 17). Thus, removal of older and larger trees decreases suitable nesting sites and food resources, increases competition, and causes the loss of current generations through an increase in infanticide and egg destruction (Lee 2010, pp. 2, 12). The species will use partially cleared and cultivated landscapes if they provide sufficient dietary requirements and maintain enough large trees. However, scarlet macaws have a better chance of surviving in large tracts of primary forest where suitable nesting cavities are more common than in open and small patches of non-primary forest (Inigo-Elias 1996, p. 91). Therefore, as the size of the suitable habitat is reduced, it is less likely to provide the essential resources for the species (Ibarra-Macias 2009, p. 6; Lees and Peres 2006, pp. 203–205).

Competition for suitable nest cavities negatively affects reproductive success of scarlet macaws, including in the northern DPS. Competition limits available nesting sites and thus the number of pairs that can breed, or competition may cause nest mortality stemming from agonistic interactions. Intraspecific competition between different pairs of scarlet macaws, and competition with pairs of other macaw species that are larger and more competitive, is intense in some areas (Renton and Brightsmith 2009, p. 5; Inigo-Elias 1996, p. 96; Nycander 1995, p. 428). Additionally, Africanized honeybees (*Apis mellifera scutellata)* are also reported to be a serious competitor with scarlet macaws for nest cavities (Garcia et al. 2008, p. 52; Vaughan et al. 2003, p. 13; Inigo-Elias 1996, p. 61).

Collecting wild birds for the pet trade has been occurring for centuries (Cantu-Guzman et al. 2007, p. 9; Guedes 2004, p. 279; Snyder et al. 2000, pp. 98–99). Removing birds from the wild is driven by demand for the pet trade and related to rural poverty because capture for sale in local markets can provide a significant source of supplemental income in rural areas (Huson 2010, p. 58; González 2003, p. 438). Low salaries and high unemployment in the region drive people to search for extra sources of income that may include collecting wildlife for the pet trade (TRAFFIC NA 2009, pp. 23–24).

Collection of scarlet macaws decreases the population, inhibits future breeding by removing reproductive age adults, causes mortality of eggs or chicks, and causes damage to and loss of nesting sites (Cantu-Guzman et al. 2007, p. 14). Scarlet macaws are long-lived species with a low reproductive rate, low survival of chicks and fledglings, late age to first reproduction, and large proportions of the population as nonbreeding adults. Therefore, the species is particularly vulnerable to overexploitation, especially when individuals are removed from the wild year after year (Munn 1992, p. 57; Wright et al. 2001, p. 712). Collection and deforestation often work in tandem because activities that clear forests increase access to previously inaccessible areas, which in turn increases the vulnerability of species to overexploitation by humans (Peres 2001, entire; Putz et al. 2000, pp. 16, 23).

The scarlet macaw is a popular pet species within its range countries, and most birds collected for the pet trade are sold as pets and remain within range countries (Snyder et al. 2000, p. 150; Wiedenfeld 1994, p. 102). Because of high mortality rates associated with capture and transport of wildlife, the number of birds sold or exported for the pet trade represents only a portion of those removed from the wild. Cumulative mortality rates before parrots reach customers have been estimated to be as high as 77 percent; for nestlings, approximately 80 percent died before reaching a pet store (Inigo and Ramos 1991 and Enkerlin 2000, in Cantu-Guzman et al. 2007, p. 60). Pet collection is a threat for the scarlet macaw in the northern DPS.

On June 6, 1981, the scarlet macaw was included in Appendix II of the Convention on International Trade in

Endangered Species of Wild Fauna and Flora (CITES). On August 1, 1985, the scarlet macaw was included in Appendix I of CITES because of the high level of trade. Species included in Appendix I are considered threatened with extinction, and international trade is permitted only under exceptional circumstances, which generally precludes commercial trade. The United States and Europe historically were the main markets for wild birds in international trade (FAO 2011b, p. 3). Trade was particularly high in the 1980s (Rosales et al. 2007, pp. 85, 94; Best et al. 1995, p. 234). However, in the years following the enactment of the Wild Bird Conservation Act in 1992 (WBCA; 16 U.S.C. 4901 *et seq.*), there was a substantial reduction of wild-caught parrots imported to the United States from Mesoamerica and South America as well as the rest of the world (Pain et al. 2006, p. 327). The European Union, which was the largest market for wild birds following enactment of the WBCA, banned the import of wild birds in 2006 due to disease concerns (FAO 2011b, p. 21), thus eliminating another major market and further reducing international trade of wild parrots and macaws.

The scarlet macaw is protected by domestic laws within all countries and the countries have a system of protected areas or national parks that aim to conserve biodiversity. Enforcement of wildlife laws is generally lacking because the agencies responsible often do not have the financial resources, personnel, or both to adequately enforce their laws, particularly in remote areas (TRAFFIC NA 2009, p. 20; Valdez et al. 2006, p. 276; Mauri 2002, entire).

Historically, the scarlet macaw existed in much higher numbers. However, the species currently occurs in relatively small and fragmented populations throughout most of its range. Small, isolated populations place the species at greater risk of local extirpation or extinction due to a variety of factors, including loss of genetic variability, demographic and environmental stochasticity, and natural catastrophes (Lande 1995, entire; Lehmkuhl and Ruggiero 1991, p. 37; Gilpin and Soulé 1986, pp. 25–33; Soulé and Simberloff 1986, pp. 28–32; Shaffer 1981, p. 131; Franklin 1980, entire). The species maintains some genetic diversity throughout its range and between the two subspecies. With the ongoing loss of habitat throughout the range, the loss of genetic variability could diminish their capacity to adapt to changes in the environment (Blomqvist et al. 2010, entire; Reed and Frankham 2003, pp. 233–234; Nunney and Campbell 1993, pp. 236–237; Soulé and Simberloff 1986, pp. 28–29; Franklin 1980, pp. 140–144). Other natural events that put small populations at risk include variation in birth and death rates, fluctuations in gender ratio, and environmental disturbances such as wildfire and climatic shifts (Blomqvist et al. 2010, entire; Gilpin and Soulé 1986, p. 27; Shaffer 1981, p. 131). Negative impacts associated with small population sizes of scarlet macaws may be magnified because of interactions with habitat loss and collection. Cumulatively, the small population sizes occurring in narrow lowland forested areas in fragmented habitat, combined with ongoing collection and a long-lived species' low reproduction rate, increases the species' vulnerability. As discussed later below, some populations of the scarlet macaw in the northern DPS are relatively small and fragmented.

The scarlet macaw in the northern DPS occurs from northwestern Costa Rica, south through mainland Panama, and west of the Andes Mountains in Colombia. Deforestation, collection, lack of effective enforcement of existing laws, and small population size all cumulatively affect scarlet macaws in the northern DPS. In the 2019 rule, we found the northern DPS of the southern subspecies of scarlet macaw was not currently in danger of extinction but likely to become in danger of extinction within the foreseeable future throughout all of its range. We now consider our ''significant portion of its range'' analysis for the scarlet macaw in the northern DPS based on the plain language of the Act and the Court's order in *Everson.*

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. Following the court's holding in *Everson,* and having determined that the northern DPS of the southern subspecies of scarlet macaw is not in danger of extinction (endangered species) throughout all of its range, we evaluate whether the scarlet macaw in the northern DPS is in danger of extinction in a significant portion of its range—that is, whether there is any portion of the northern DPS' range for which both (1) the portion is significant; and (2) the northern DPS 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 for these potentially significant portions of the range. 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. In undertaking this analysis for the northern DPS of scarlet macaw, we choose to address the status question first—we consider information pertaining to the population sizes and geographic distribution of the portions, the threats that the northern DPS faces, and the northern DPS' response to those threats to identify portions of the range where the northern DPS may be endangered.

In examining the status question, we note that the statutory difference between an endangered species and a threatened species is the timeframe in which the species (subspecies or DPS) becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. Thus, we reviewed the best scientific and commercial data available regarding the time horizon for the threats that are driving the scarlet macaw in the northern DPS to warrant listing as a threatened species throughout all of its range. We then considered whether these threats or their effects are occurring in any portion of the northern DPS' range such that the northern DPS is in danger of extinction now in that portion of its range. We examined the following threats: habitat loss and fragmentation, collection for the pet trade, small population size, and climate change, including synergistic and cumulative effects.

We evaluated the northern DPS of the southern subspecies of scarlet macaw to determine if it is in danger of extinction now in any portion of its range. The range can theoretically be divided into portions in a number of ways. For the scarlet macaws in the northern DPS, we considered the northern DPS' population sizes, geographic distribution, and threats to the northern DPS, including the northern DPS' response to the threats and cumulative effects. We considered whether the effects of the threats on the northern DPS are greater in any biologically meaningful portion of the northern DPS' range than in other portions such that the northern DPS is in danger of extinction now in that portion. We focused our analysis on portions of the northern DPS' range that may meet the definition of an endangered species. We identified three portions of the northern DPS for these analyses: (1) the Pacific slope of Costa Rica, (2) mainland

Panama, and (3) Colombia west of the Andes Mountains. Scarlet macaws can engage in large-scale movements to exploit resources within the larger landscape. They also undergo smaller scale movements between nocturnal roost sites and daily foraging areas (Marineros and Vaughan 1995, pp. 448–450; Forshaw 1989, p. 407). Movements are often dictated by the spatial and temporal abundance of resources. The northern DPS includes populations of scarlet macaw in each country that are separated from each other with no known connectivity between them. Therefore, even if scarlet macaws can engage in larger scale movements within suitable habitat, the portions are based on the known population distributions of the northern DPS within each country and not strictly based on the geographic border of each country.

Analysis of the Costa Rica Portion

The scarlet macaw in the northern DPS has been reduced from much of its historical range in Costa Rica due to the primary threats of habitat loss and collection. The northern DPS of scarlet macaw in Costa Rica occurs in lowlands along the Pacific slope flanked by the central highlands and the Pacific Ocean. The Costa Rica population in the northern DPS, including both the ACOPAC and ACOSA populations, is the largest population and accounts for most of the total population of scarlet macaws in the northern DPS.

Costa Rica is both losing and gaining forest cover throughout the country (Hansen et al. 2013, entire; Brightsmith 2016, in litt. p. 1). Even though Costa Rica was the only country in Central America to experience a positive change in forest cover over a recent 25-year period (1990–2015; FAO 2015, p. 10), some level of deforestation still occurs in parts of the country due to expansion of agriculture and livestock activities and to illegal logging in private forests and national parks and reserves (Government of Costa Rica 2011, p. 2; Government of Costa Rica 2010, pp. 10–11, 38, 52–54; Parks in Peril 2008, unpaginated). The major driver of deforestation is the conversion of forest to livestock and agricultural uses because land users often generate a higher annual income with agriculture or livestock-raising than with forests. Indigenous communities have difficulties keeping nonindigenous farmers from encroaching onto their lands (Government of Costa Rica 2011, p. 1). Additionally, a lack of human and financial resources allows squatters and illegal loggers to exploit resources in protected areas.

A comprehensive study of deforestation in Costa Rica's park system found that deforestation inside Level-1 protected areas, which denotes areas with absolute protections and where no land-cover change is allowed, was negligible from 1987 to 1997, and within the park's 1-km buffer zones the protected areas had a net forest gain for the same period. However, a 1 percent annual deforestation rate occurred in 10-km buffer zones of protected areas. Thus, as distance increases from Level-1 protected areas, total deforestation and deforestation rates also increase (Sanchez-Azofeifa et al. 2003, p. 128). Corcovado National Park, the largest protected area in ACOSA, is one of the Level-1 protected areas in Costa Rica most affected by deforestation within 1 km of its boundaries (Sanchez-Azofeifa et al. 2003, pp. 128–129). Within 10 km of the park, significant clearing occurred (Sanchez-Azofeifa et al. 2003, p. 132). Additionally, in the ACOPAC scarlet macaw population, deforestation occurs around the Carara National Park with a higher rate of deforestation northwest of Carara than to the south (Sanchez-Azofeifa et al. 2003, pp. 128–129; Brightsmith 2016, in litt., p. 12). Generally, National Parks on the Pacific slope are experiencing less deforestation on surrounding lands than those on the Atlantic slope, which is attributed to the intensification and expansion of agricultural cash crops such as banana and pineapple (Sanchez-Azofeifa et al., 1999, 2001, cited in Sanchez-Azofeifa et al. 2003, p. 129).

Overall, the northern DPS' habitat and population size have been reduced from historical levels, and the primary threat of deforestation affects the wild population of scarlet macaws in Costa Rica. Even though some deforestation is ongoing, Costa Rica has experienced a positive change in forest cover over a 25-year period, 1990 to 2015. Deforestation or forest degradation in the current range of the scarlet macaw is not occurring at a level that is causing a further decline of the northern DPS in Costa Rica.

Historically, northern DPS scarlet macaws in Costa Rica experienced heavy collection pressure, but there are ongoing efforts to reduce the magnitude of collection. Hunting is important in the communities for both subsistence and monetary gain; with low-income communities surrounding a park, the incentives to poach are great (Huson 2010, p. 66). Intense management efforts in the mid-1990s that included anti-poaching efforts increased recruitment into the population. However, the anti-poaching efforts and the associated increase in population size was not sustained over the long term (Vaughan et al. 2005, p. 127). A significant effort to control poaching in the Carara area is ongoing because poaching continues to be a serious problem (Vaughan 2005, pers. comm., in McReynolds 2016, in litt., unpaginated). Once successfully fledged from the nest, scarlet macaws appear to have a high survival rate (Myers and Vaughan 2004, cited in Vaughan et al. 2005, p. 128).

In 2005, the ACOPAC population of scarlet macaws was believed to be self-sustaining, even with heavy poaching pressure (Vaughan et al. 2005, p. 128). We have no information that suggests a change in this conclusion since 2005. In the ACOSA, approximately half (48 percent) of residents interviewed believed that scarlet macaws were still being poached, although 85 percent of the interviewees believed numbers of scarlet macaws were increasing and 43 percent of the interviewees mentioned less poaching occurs now than before (and none said poaching had increased (Dear et al. 2010, p. 13)). Overall, while collection is ongoing in the ACOSA and ACOPAC populations, the population of scarlet macaws is increasing despite the collection pressure.

Costa Rica's Wildlife Conservation Law and its amendments prohibit the hunting, collection, and extraction of all species, except in certain cases for subsistence by indigenous groups, scientific purposes, or species control (Costa Rican Embassy 2013, unpaginated; NOVA 2013, unpaginated; Tico Times 2017, unpaginated). Additionally, Costa Rica has protected its resources through an ambitious national parks and biological reserves system, but those parks and reserves are inadequately funded and insufficiently controlled (Government of Costa Rica 2010, p. 34). Poaching by local communities is a problem of great concern; hunting within national park boundaries is illegal, but it is difficult to monitor and enforce hunting prohibitions with limited funds and supervision (Huson 2010, p. 18; Government of Costa Rica 2010, p. 52). Officials in Carara National Park reported that they do not have enough staff to effectively control poaching (Huson 2010, p. 8).

Active reintroduction programs have added hundreds of scarlet macaws to the wild in the northern DPS in Costa Rica (Ara Project 2017, unpaginated; Brightsmith et al. 2005, p. 468; Dear et al. 2010, pp. 15–17; Forbes 2005, p. 97; Tiskita Jungle Lodge 2018, unpaginated). Most reintroduction projects also conduct environmental education at a local level and attract additional media attention to educate

the public about the importance of scarlet macaws and their conservation (Brightsmith 2016, in litt., p. 22).

Success of the reintroductions varies. On the Nicoya Peninsula in northwestern Costa Rica, scarlet macaws are currently released at Punta Islita, Playa Tamboor, and Curú National Wildlife Refuge, which are all within 50 km of each other. It is difficult to determine how these populations will fare over time because these populations are isolated, but these three release sites could help repopulate the Nicoya Peninsula (Brightsmith 2016, in litt., p. 15). Some released birds survived but have not produced chicks; we do not have information concerning the status of most of the released birds at these locations (Brightsmith et al. 2005, p. 468). Within the South Pacific coast region, over 75 scarlet macaws have been released into the wild with close to 90 percent survival rate (Tiskita Jungle Lodge 2018, unpaginated). This reintroduction program has ceased because a viable population has been established that is large enough to potentially connect with populations in the ACOSA that are farther north along the coast (Ara Project 2018, unpaginated; Tiskita Jungle Lodge 2018, unpaginated).

Releases of captive scarlet macaws could increase the wild populations because many of the reintroduced captive-raised and confiscated birds are released adjacent to existing populations or at least within the range that scarlet macaws are known to disperse. Some of the released birds have adapted to surviving in the wild by finding mates, food, and nesting resources. Conversely, releases of captive scarlet macaws could potentially pose a threat to wild populations by exposing wild birds to diseases for which wild populations have no resistance (Dear *et al.* 2010, p. 20; Schmidt 2013, pp. 74–75; also see IUCN 2013, pp. 15–17). But generally speaking, disease risks are small because the probable frequency of occurrence is low (see *Factor C* discussion in 77 FR 40237–40238; July 6, 2012).

The population of scarlet macaws in the northern DPS is estimated to range between 1,000 and 2,000 birds (see table 1, above). Information indicates that the ACOPAC and ACOSA populations in Costa Rica, which make up the bulk of the northern DPS of scarlet macaw, are at least stable and likely increasing. The population appears to be expanding into suitable habitat along the Pacific slope between the ACOPAC and ACOSA populations. With regular sightings of scarlet macaws between the two populations, the scarlet macaw is basically continuous from the Osa Peninsula (ACOSA population) to Carara National Park (ACOPAC population) (Brightsmith 2016, in litt., p. 13). While poaching, deforestation, small population size, and inadequate enforcement of existing protections continue to affect the species, because the population is increasing and expanding in its range between the two populations, it is reasonable to conclude that the Costa Rica portion of scarlet macaw is not currently in danger of extinction and does not meet the definition of an ''endangered species'' under the Act. However, we expect that the threats will continue and put the Costa Rica portion in danger of extinction in the foreseeable future. Because we reached a negative answer with respect to the status of the scarlet macaws in the northern DPS in Costa Rica meeting the definition of an endangered species, we do not need to evaluate whether the Costa Rica portion of the northern DPS is significant.

Analysis of the Mainland Panama Portion

The best available information on distribution and abundance indicates that there are very few scarlet macaws on mainland Panama. The current population on mainland Panama is estimated to be fewer than 25 birds that occur in two areas, in northwest Panama in the upper Río Corotú near Puerto Armuelles and Querévalo in the Chiriquí province, and on the southern end of the Azuero Peninsula of Veraguas, near Cerro Hoya National Park, Tonosi Forest Reserve, and farther to the east. In the area of the upper Río Corotú near Puerto Armuelles and Querévalo in the Chiriquí province, there have been sporadic sightings of scarlet macaws. However, it is uncertain if the birds in northwest Panama are a wild population or birds dispersing south from a reintroduction program at Tiskita, Costa Rica, that have successfully established in the area because of the program.

Deforestation in Panama is relatively low for the Mesoamerica region; the annual decrease during 1990–2015 was 169 km^2 (65 mi^2 or 0.4 percent) (FAO 2015, p. 12). Drivers of deforestation include urbanization, cattle ranching, agro-industrial development, unregulated shifting cultivation, open mining, poor logging practices, charcoal-making, and fire (ITTO 2005, in Blaser et al. 2011, p. 354). Deforestation in the country currently occurs primarily in the Darien, Colon, Ngabe Bugle, and Bocas del Toro provinces (Blaser et al. 2011, p. 354), which are outside the scarlet macaw's range in Panama. However, illegal logging is widespread in humid forests throughout Panama, even in protected areas (Blaser et al. 2011, p. 361). We are unaware of information indicating that deforestation and forest degradation are impacting scarlet macaws in northwest Panama. We are also unaware of information indicating that deforestation is occurring near the small but unknown number of scarlet macaws on the southern end of the Azuero Peninsula of Veraguas, near Cerro Hoya National Park and in the forest reserves just to the east. Less than 15 percent of the peninsula is covered by mature forest, but most of the remaining forest can be found in Cerro Hoya National Park and the Tronosa Forest Reserve to the east (Miller et al. 2015, p. 1).

Little information is available on collection of scarlet macaws in Panama, although it was a factor leading to the extremely low population size of the species from the country (McReynolds 2016, in litt. unpaginated). Cerro Hoya National Park is located on the southern tip of the Azuero Peninsula within Panama's most impoverished province (Veraguas) and the Los Santos province. Collection of wildlife (including scarlet macaws) is a threat in this area because locals use unoccupied lands for logging and to collect wildlife for sustenance and income. Poaching of wildlife is common in rural areas (Government of Panama 2005, p. 36; Parker et al. 2004, p. II–6). Therefore, it is reasonable to conclude that some level of poaching of scarlet macaws likely occurs in the country, although at what level is unknown. Because the species is vulnerable to overexploitation based on their life-history traits, poaching individuals from such a small population would impact the population's viability. Moreover, despite a program to use captive scarlet macaw feathers to cut down on hunting of wild birds for their feathers, hunting still occurs, and collecting chicks for pets remains a concern at Cerro Hoya National Park (Rodriquez and Hinojosa 2010, in McReynolds 2016, in litt., unpaginated).

The National Environment Authority is the primary government institution for forest and biodiversity conservation and management. To protect and regulate the use of wildlife, flora and fauna, the Panamanian Government has created numerous laws, including Wildlife Law 24 that establishes wildlife as part of the natural heritage of Panama and provides for protection, restoration, research, management and development of the country's genetic resources, including rare species; the General Law

on the Environment (41), which establishes the basic principles and norms for the protection, conservation, and restoration of the environment and promotes the sustainable use of natural resources; and the National System of Protected Areas (Parker et al. 2004, p. III–2; Blaser et al. 2011, p. 355). However, the National Environment Authority has limited capacity and resources to ensure adherence to forest-related laws and regulations (Blaser et al. 2011, p. 361).

Overall, deforestation is a threat to forests in Panama, primarily occurring in areas outside of the scarlet macaw's range. Illegal and small-scale subsistence logging is ongoing with little oversight and causes forest degradation. However, we are unaware of deforestation affecting the northern DPS on mainland Panama. Poaching was not identified as a main threat to biodiversity in Cerro Hoya National Park (Parker et al. 2004, Annex G, unpaginated), but poaching is common in rural areas and collection of scarlet macaws within the park and in rural areas is likely ongoing. The threats of habitat loss and collection are not geographically concentrated in Panama and are not occurring at a different rate or on an increased trajectory compared to the other parts of the range within the northern DPS. The scarlet macaw exists on mainland Panama in two areas with an extremely small overall population size (less than 25 birds). The scarlet macaw's life history traits limit the species' ability to recover, particularly when individuals are removed from the wild year after year. The loss of individuals in the wild coupled with any loss of habitat that removes large trees that provide resources for nesting and food are threats to the species' viability in Panama. Therefore, because of the very small population size and ongoing threats, we conclude that the northern DPS is in danger of extinction in the Panama portion.

Because we concluded that the northern DPS is in danger of extinction in the Panama portion, we next proceed to evaluating whether this portion of the range is significant. To determine whether a portion is ''significant,'' we considered how the portion contributes to the viability of the species. There are multiple ways in which a portion of the species' range could contribute to the viability of a species, including (but not limited to) by serving a particular role in the life history of the species (such as the breeding grounds or food source for the species), by including high-quality or unique-value habitat relative to the rest of the habitat in the range, or by representing a large percentage of the range.

The scarlet macaw occurs in two areas in Panama, although it is uncertain if the birds that occur in the western border region of Costa Rica and Panama are wild or the reintroduced birds dispersing south from Tiskita, Costa Rica. The total range of where scarlet macaws occur in Panama is unknown, but the best available information indicates the size of the portion is very small and not a large percentage of the northern DPS's range.

The total population of scarlet macaws on mainland Panama represents only about 1 percent of the total population of the northern DPS. The populations in Panama are not biologically or genetically unique from other populations in the northern DPS. We are not currently aware of any life-history functions that the Panama portion is contributing meaningfully to the northern DPS' overall resiliency and representation, within the context of a ''significant portion of its range'' analysis. For example, there is no information that the very small population in Panama is serving as a source population for the northern DPS. The northern DPS contains similar ecosystems across its range—lowland tropical habitats bounded by highlands or the Pacific Ocean. Scarlet macaws are dependent on larger, older trees that have large nesting cavities, forage primarily in the forest canopy, and are relatively general in their feeding habits. The best available information does not indicate that forests where scarlet macaws occur in Panama are higher quality or provide high value relative to the remaining portions of the range in the northern DPS.

Genetically, the populations on the Pacific slope in Costa Rica, mainland Panama, and in Colombia west of the Andes Mountains were determined to be a spatially discrete group within the broader lineage of *Ara macao* (Schmidt 2013, p. 49; Schmidt et al. 2019, p. 744). The populations we included in the northern DPS are those same populations. Thus, there is no information that the scarlet macaws in Panama are genetically or biologically unique from the rest of the northern DPS. Overall, this portion by itself will have only a minimal impact on the viability of the northern DPS, and therefore, cannot be significant and cannot be the basis for listing the entire northern DPS as endangered. Therefore, having found that the Panama portion is in danger of extinction, but the portion is not significant, the Panama portion is not a significant portion of the northern DPS' range because both factors must be true.

Analysis of the Colombia Portion

Scarlet macaws historically occurred in northwest Colombia in the tropical zone of the Caribbean region, and the inter-Andean valleys, the largest of which are the Magdalena and Cauca River valleys (Salaman et al. 2009, p. 21; Hilty and Brown 1986, p. 200; Forshaw 1989, p. 407). The species' range was reported from eastern Cartagena to the low Magdalena Valley, southward to southeast Córdoba, and the middle Magdalena Valley (Hilty and Brown (1986, p. 200). However, the scarlet macaw has been reported as probably close to extinction in the Magdalena and Cauca River valleys, and north (Donegan 2013, in litt.; Ellery 2013, in litt.; McMullen 2010, p. 60); few sightings have been reported. Scarlet macaws may occur in very low numbers in the more remote and inaccessible parts of the region, but their status there is not clear. We are unaware of any other detailed information on the numbers, distribution, or status of the scarlet macaw in northwest Colombia.

The primary factors affecting the northern DPS in northwest Colombia are habitat loss, and to a lesser extent trade (Donegan 2013, in litt., unpaginated). Deforestation is ongoing in northwest Colombia with few large tracts of forest remaining within the historical range of the scarlet macaw (Ortega and Lagos 2011, p. 82; Salaman et al. 2009, p. 21; Colombia Gold Letter 2012, pp. 1–2). Forest loss is due primarily to conversion of land to pasture and agriculture, but also mining, illicit crops, and logging (Ortega and Lagos 2011, pp. 85–86). Colombia has lost forest at a steady rate over a 25-year period, 1990–2015 (FAO 2015, p. 10). The Magdalena and Caribbean regions had approximately only 7 percent and 23 percent (respectively) of their land area in original vegetation, with the remainder converted primarily to grazing land (79 percent and 68 percent, respectively) (Etter et al. 2006, p. 376). The Magdalena region lost 40 percent of its forest cover between 1970 and 1990, and an additional 15 percent between 1990 and 1996 (Restrepo & Syvitski 2006, pp. 69, 72). Within the Caribbean region, protected areas and sanctuaries have lost up to 70 percent of forest cover since they were created in the late 1970s and early 1980s (Miller et al. 2004, p. 454).

The threat of habitat loss is not geographically concentrated in Colombia or occurring at a different rate or on an increased trajectory compared to the other parts of the range within the

northern DPS. Collection for the pet trade occurs throughout the range of the northern DPS, but collection is not geographically concentrated in Colombia or occurring at a different scale from any other portion in the northern DPS. All indications suggest that the scarlet macaw's population in northwest Colombia is very small and has been significantly reduced from its historical range in the larger inter-Andean River valleys. With ongoing deforestation that removes the species' habitat for nesting and foraging, viability of a very small population is likely minimal, particularly because the species' life-history traits limit the rate of recovery from loss of wild populations. Therefore, we conclude that the northern DPS is in danger of extinction in the Colombia portion of the species' range of the northern DPS.

Because we conclude that the northern DPS is in danger of extinction in the Colombia portion, we next proceed to evaluating whether this portion of the range is significant. As explained above, to determine whether a portion was ''significant,'' we considered how the portion contributes to the viability of the northern DPS. The population is reported to be near extirpation from northwest Colombia, but a few individuals may possibly occur in more remote and inaccessible areas of the region. The total range of where scarlet macaws occur in Colombia is unknown, but the best available information indicates the size of the portion is very small and not a large percentage of the northern DPS's range. Additionally, all indications suggest the population is very small and likely represents a minimal proportion of the total population of the northern DPS.

The population in Colombia is not biologically or genetically unique from other populations in the northern DPS. We are not currently aware of any life-history functions that the Colombia portion is contributing meaningfully to the northern DPS' overall resiliency and representation, within the context of a ''significant portion of its range'' analysis. For example, there is no information that the very small but unknown population in Colombia is serving as a source population for the northern DPS. The northern DPS contains similar ecosystems across its range—lowland tropical habitats bounded by highlands and/or the Pacific Ocean. Scarlet macaws are dependent on larger, older trees that have large nesting cavities, forage primarily in the forest canopy, and are relatively general in their feeding habits. The best available information does not indicate that forests where scarlet macaws occur in northwest Colombia are higher quality or provide high value relative to the remaining portions of the range in the northern DPS.

Genetically, the populations on the Pacific slope in Costa Rica, mainland Panama, and in Colombia west of the Andes Mountains were determined to be a spatially discrete group within the broader lineage of *Ara macao* (Schmidt 2013, p. 49; Schmidt et al. 2019, p. 744). The populations we included in the northern DPS are those same populations. Thus, there is no information that the scarlet macaws in Colombia are genetically or biologically unique from the rest of the northern DPS. Overall, this portion by itself will have only a minimal impact on the viability of the northern DPS, and therefore, cannot be significant and cannot be the basis for listing the entire northern DPS as endangered. Therefore, having found that the Colombia portion may be in danger of extinction, but the portion is not significant, the Colombia portion of the northern DPS' range is not a significant portion because both factors must be true.

Analysis of the Panama and Colombia Portions Combined

Having determined that neither the Panama nor the Colombia portions are significant portions of the northern DPS's range, we considered whether the Panama and Columbia portions combined might be a significant portion of the range of the scarlet macaw in the northern DPS that is endangered. The scarlet macaw in the northern DPS may be in danger of extinction in that combined portion because of ongoing threats of deforestation that removes the species' habitat for nesting and foraging, as well as collection for the pet trade. Viability of very small populations in Panama and Colombia is likely minimal, particularly because the species' life-history traits limit the rate of recovery from loss of wild populations. Therefore, we conclude that the scarlet macaw in the northern DPS is in danger of extinction in this portion of the northern DPS. However, even taken together, this combined portion is not significant because the populations are very small, they do not account for a large percentage of the range, and this portion is not biologically or genetically unique from the rest of the northern DPS. Panama and Colombia taken together will have only a minimal impact on the viability of the scarlet macaw in the northern DPS, and therefore, cannot be significant and cannot be the basis for listing the entire northern DPS as endangered. Thus, having found that the portion is in danger of extinction, but the portion is not significant, the portion of the scarlet macaw in the northern DPS's range combining Panama and Colombia together is not a significant portion because both factors must be true.

The analysis of the Panama portion, Colombia portion, and the portion that combines Panama and Colombia together, does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017), because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of ''significant,'' that those court decisions held to be invalid.

Conclusion

In the document announcing that we were reexamining the ''significant portion of the range'' analysis for the northern DPS of the southern subspecies of scarlet macaw, we stated that we would reconsider our analysis based on the plain language of the Act and the implications of *Everson* (87 FR 66093; November 2, 2022). If the analysis determined that there are no significant portions of the range for the northern DPS of the southern subspecies of scarlet macaw, the ''significant portion of its range'' analysis ends the process. If the analysis determined that one or more significant portions of the range exist but do not warrant endangered status, the ''significant portion of its range'' analysis also ends the process. However, if the analysis found one or more significant portions of the range and found the northern DPS of the southern subspecies of scarlet macaw should be listed as endangered instead of threatened, we would submit a proposed rule to the **Federal Register** by March 28, 2024, seeking public comment on the proposed reclassification of the northern DPS of the southern subspecies of scarlet macaw.

In this analysis of the northern DPS of the southern subspecies of scarlet macaw, we assessed four portions within the DPS: the Pacific slope of Costa Rica, Mainland Panama, and Colombia west of the Andes, and Panama and Colombia combined. We concluded that none of the portions in the northern DPS are both in danger of extinction and significant. The Costa Rica population is not in danger of extinction; therefore, we did not need to address its significance. For the Panama population and Colombia population, it is reasonable to conclude that each of

these portions may be in danger of extinction; however, neither of these portions of the range are significant. Similarly, combining the Panama and Colombia populations, we concluded this portion may be in danger of extinction; however, this portion of the range is not significant. Having completed the ''significant portion of its range'' analysis for the northern DPS and determined that the northern DPS is not in danger of extinction in any significant portion of its range, we do not propose to revise the current status of the southern subspecies of scarlet macaw in the northern DPS. Therefore, we affirm the listing of the scarlet macaw as set forth in the 2019 rule.

Author

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

Authority

This document is published under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–06723 Filed 3–30–23; 11:15 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 230329–0086]

RIN 0648–BL99

Fisheries of the Northeastern United States; Framework Adjustment 36 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements the measures included in Framework Adjustment 36 to the Atlantic Sea Scallop Fishery Management Plan as adopted and submitted by the New England Fishery Management Council. Framework 36 establishes scallop specifications and other measures for fishing years 2023 and 2024. Framework 36 implements measures to protect small scallops to support rotational access area trips to the fleet in future years. To promote uniformity in the fishery, this final rule also corrects and clarifies regulatory text that is unnecessary, outdated, or unclear. This action is necessary to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource.

DATES: Effective March 31, 2023.

ADDRESSES: The Council has prepared an Environmental Assessment (EA) for this action that describes the measures contained in Framework Adjustment 36 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and other considered alternatives and analyzes the impacts of these measures and alternatives. The Council submitted Framework 36 to NMFS that includes the EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, the Initial Regulatory Flexibility Analysis (IRFA), and a Regulatory Impact Review (RIR). Copies of supporting documents used by the New England Fishery Management Council, including the EA and RIR, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: *https://www.nefmc.org/library/scallop-framework-36.*

In addition to the EA, NMFS has prepared a Categorical Exclusion (CE) for the revision of the bushel definition being implemented under Section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Steven Act). Copies of the CE are available from: Michael Pentony, Regional Administrator, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Policy Analyst, (978) 282–8456.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council adopted Framework Adjustment 36 to the Atlantic Sea Scallop FMP on December 7, 2022. The Council submitted Framework 36, including an EA, for NMFS approval on March 9, 2023. NMFS published a proposed rule for Framework 36 on March 3, 2023 (88 FR 13408). To help ensure that the final rule would be implemented before the start of the fishing year on April 1, 2023, the proposed rule included a 15-day public comment period that closed on March 20, 2023.

NMFS has approved all of the measures in Framework 36 recommended by the Council, as described below. This final rule implements Framework 36, which sets scallop specifications and other measures for fishing years 2023 and 2024, including changes to the catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2023, and default specifications for fishing year 2024. The Magnuson-Stevens Fishery Conservation and Management Act allows NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. NMFS generally defers to the Council's policy choices unless there is a clear inconsistency with the law or the FMP. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here. Consistent with section 305(d) of the Magnuson-Stevens Act, this final rule also addresses regulatory text that is unnecessary, outdated, or unclear.

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACL), Annual Catch Targets (ACT), Annual Projected Landings (APL) and Set-Asides for the 2023 Fishing Year, and Default Specifications for Fishing Year 2024

The Council set the OFL based on a fishing mortality (F) of 0.61, equivalent to the F threshold updated through the Northeast Fisheries Science Center's most recent scallop benchmark stock assessment that was completed in September 2020. The ABC and the equivalent total ACL for each fishing year are based on an F of 0.45, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended scallop fishery ABCs of 43.7 million lb. (19,828 mt) for 2023 and 44.5 million lb. (20,206 mt) for the 2024 fishing year, after accounting for discards and incidental mortality. The SSC will reevaluate and potentially adjust the ABC for 2024 when the Council develops the next framework adjustment.

Table 1 outlines the scallop fishery catch limits.

TABLE 1—SCALLOP CATCH LIMITS (mt) FOR FISHING YEARS 2023 AND 2024 FOR THE LIMITED ACCESS AND LIMITED ACCESS GENERAL CATEGORY (LAGC) INDIVIDUAL FISHING QUOTA (IFQ) FLEETS

Catch limits	2023 (mt)	2024 (mt) [1]
OFL	27,504	29,151
ABC/ACL (discards removed)	19,828	20,206
Incidental Landings	23	23
Research Set-Aside (RSA)	578	578
Observer Set-Aside	198	202
Northern Gulf of Maine (NGOM) Set-Aside	175	130
ACL for fishery	18,853	19,403
Limited Access ACL	17,816	18,335
LAGC Total ACL	1,037	1,067
LAGC IFQ ACL (5 percent of ACL)	943	970
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	94	97
Limited Access ACT	15,441	15,891
APL (after set-asides removed)	10,368	(1)
Limited Access APL (94.5 percent of APL)	9,798	(1)
Total IFQ Annual Allocation (5.5 percent of APL) [2]	570	428
LAGC IFQ Annual Allocation (5 percent of APL) [2]	518	389
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	52	39

[1] The catch limits for the 2024 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2024 that will be based on the 2023 annual scallop surveys.

[2] As a precautionary measure, the 2024 IFQ and annual allocations are set at 75 percent of the 2023 IFQ Annual Allocations.

This action deducts 1.275 million lb (578 mt) of scallops annually in 2023 and 2024 from the respective ABCs for use as the Scallop RSA to fund scallop research. Participating vessels are compensated through the sale of scallops harvested under RSA projects. Of the 1.275-million lb (578-mt) allocation, NMFS has already allocated 47,057 lb (21,345 kg) to previously funded multi-year projects as part of the 2022 RSA awards process. NMFS reviewed proposals submitted for consideration of 2023 RSA awards and intends to announce project selections in late March. Details on the 2023 RSA awards will be posted on our website when announced.

This action also deducts 1 percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-aside is 198 mt for 2023 and 202 mt for 2024. The Council may adjust the 2024 observer set-aside when it develops specific, non-default measures for 2024. In fishing year 2023, the compensation rates for limited access vessels in open areas fishing under days-at-sea (DAS) is 0.11 DAS per DAS fished. For access area trips, the compensation rate is 250 lb. (113.4 kg), in addition to the vessel's possession limit for the trip for each day or part of a day an observer is onboard.

For LAGC IFQ trips less than 24 hours, a vessel will be able to harvest the trip limit and the daily compensation rate on the observed trip, or the vessel could harvest any unfished compensation on a subsequent trip while adhering to the commercial possession limit. LAGC IFQ vessels may possess an additional 250 lb. (113.4 kg) per trip on trips less than 24 hours when carrying an observer.

For trips exceeding 24 hours, the daily compensation rate of 250 lb. (113.4 kg) will be prorated at 12-hour increments. The amount of compensation a vessel can receive on one trip will be capped at 2 days (48 hours) and vessels fishing longer than 48 hours will not receive additional compensation allocation. For example, if the observer compensation rate is 250 lb./day (113.4 kg/day) and an LAGC IFQ vessel carrying an observer departs on July 1 at 2200 and lands on July 3 at 0100, the length of the trip would equal 27 hours, or 1 day and 3 hours. In this example, the LAGC IFQ vessel would be eligible for 1 day plus 12 hours of compensation allocation, *i.e.,* 375 lb (170.1 kg).

For NGOM trips, a vessel will be able to harvest the trip limit and the daily compensation rate on the observed trip. NGOM vessels may possess an additional 125 lb (56.7 kg) per trip when carrying an observer.

NMFS may adjust the compensation rate throughout the fishing year, depending on how quickly the fleets are using the set aside. The Council may adjust the 2024 observer set-aside when it develops specific, non-default measures for 2024.

Open Area Days-at-Sea (DAS) Allocations

This action implements vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (*i.e.,* full-time, part-time, and occasional) for 2023 and 2024 (Table 2). The 2023 DAS allocations are the same as those allocated to the limited access fleet in 2022. Framework 36 sets 2024 DAS allocations at 75 percent of fishing year 2023 DAS allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2024 specifications action is delayed past the start of the 2024 fishing year. The allocations in Table 2 exclude any DAS deductions that are required if the limited access scallop fleet exceeds its 2022 sub-ACL.

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR 2023 AND 2024

Permit category	2023	2024 (default)
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.50

Changes to Fishing Year 2023 Sea Scallop Access Area Boundaries

For fishing year 2023 and the start of 2024, Framework 36 changes the boundaries of Area II (Table 3) to include all of both areas formerly known as Closed Area II and Closed Area II-East. This area was expanded to better support rotational access in fishing year 2023.

TABLE 3—AREA II ACCESS AREA

Point	N latitude	W longitude	Note
AII1	41°30′	67°20′	.....
AII2	41°30′	(1)	(2)
AII3	40°40′	(3)	(2)
AII4	40°40′	67°20′	.....
AII1	41°30′	67°20′	.....

[1] The intersection of 41°30′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30′ N lat., 66°34.73′ W long.
[2] From Point AII2 connected to Point AII3 along the U.S.-Canada Maritime Boundary.
[3] The intersection of 40°40′ N lat. and the U.S.-Canada Maritime Boundary, approximately 40°40′ N lat. and 65°52.61′ W long.

Fishing Year 2023 Sea Scallop Closed Area Boundaries

Framework 36 keeps the New York Bight and Nantucket Lightship-West Scallop Rotational Areas closed to scallop fishing to optimize growth of the several scallop year classes within the closure areas and to support scallop fishing in subsequent years.

This action also closes the Elephant Trunk (Table 4) and the Area I (Table 5) Scallop Rotational Areas. The Council proposed closing these areas to support the growth of small scallops in the absence of fishing pressure.

TABLE 4—ELEPHANT TRUNK SCALLOP CLOSED AREA

Point	N latitude	W longitude
ET1	38°50′	74°20′
ET2	38°50′	73°30′
ET3	38°10′	73°30′
ET4	38°10′	74°20′
ET1	38°50′	74°20′

TABLE 5—AREA I SCALLOP CLOSED AREA

Point	N latitude	W longitude
AIA1	41°30′	68°30′
AIA2	40°58′	68°30′
AIA3	40°54.95′	68°53.37′
AIA4	41°30′	69°23′
AIA1	41°30′	68°30′

Nantucket Lightship-South-Deep and Nantucket Lightship-Triangle Scallop Rotational Areas Reverting to Open Area

Framework 36 reverts the Nantucket Lightship-South-Deep and Nantucket Lightship-Triangle Scallop Rotational Areas to part of the open area. These areas were previously managed as part of the area rotation program; however, there is not enough biomass to support rotational access on an equitable basis to the entire Limited Access fleet nor was there enough recruitment seen in the annual survey to support keeping these areas as part of the program. Based on this information, they no longer meet the criteria for either closure or controlled access as defined in 50 CFR 648.55(a)(6). These areas become part of the open area and can be fished as part of the DAS program or on LAGC IFQ open area trips. Because fishing year 2022 carryover access area fishing will continue in the Nantucket Lightship-South-Deep for the first 60 days of the 2023 fishing year, these areas will not revert to open area until May 31, 2023.

Nantucket Lightship-North Scallop Rotational Area (NLS–N) To Support LAGC IFQ Access and Closed for the Limited Access Fleet for 90 Days Before Reverting to Open Area

Framework 36 allocates LAGC IFQ access area trips that can be taken in either the NLS–N (Table 6) or Area II (Table 3) for the 2023 fishing year. Once the Regional Administrator has determined that the total number of LAGC IFQ access area trips have been, or are projected to be taken, the NLS–N shall become part of the open area for LAGC IFQ vessels.

Limited access vessels will be prohibited from fishing in the area during the first 90 days of fishing year 2023 (*i.e.,* through June 29, 2023). On June 30, 2023, the NLS–N will revert to part of the open area for the limited access fleet. This area can then be fished by the limited access fleet on DAS.

TABLE 6—NANTUCKET LIGHTSHIP-NORTH SCALLOP ROTATIONAL AREA

Point	N latitude	W longitude
NLSN1	40°50′	69°30′
NLSN2	40°50′	69°00′
NLSN3	40°28′	69°00′
NLSN4	40°28′	69°30′
NLSN1	40°50′	69°30′

Full-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 7 provides the limited access full-time allocations for all of the access areas for the 2023 fishing year and the first 60 days of the 2024 fishing year. These allocations can be landed in as many trips as needed, so long as vessels do not exceed the possession limit (also in Table 7) on any one trip.

TABLE 7—SCALLOP ACCESS AREA FULL-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2023 AND 2024

Rotational access area	Scallop per trip possession limit	2023 Scallop allocation	2024 Scallop allocation (default)
Area II	12,000 lb (5,443 kg)	24,000 lb (10,886 kg)	0 lb (0 kg).
Total	.....	24,000 lb (10,886 kg)	0 lb (0 kg).

Part-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 8 provides the limited access part-time allocations for all of the access areas for the 2023 fishing year and the first 60 days of the 2024 fishing year. These allocations can be landed in as many trips as needed, so long as the vessels do not exceed the possession limit (also in Table 8) on any one trip.

TABLE 8—SCALLOP ACCESS AREA PART-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2023 AND 2024

Rotational access area	Scallop per trip possession limit	2023 Scallop allocation	2024 Scallop allocation (default)
Area II	9,600 lb (4,082 kg)	9,600 lb (4,354 kg)	0 lb (0 kg).
Total		9,600 lb (4,354 kg)	0 lb (0 kg).

LAGC Measures

1. ACL and IFQ Allocation for LAGC Vessels with IFQ Permits. For LAGC vessels with IFQ permits, this action implements a 943-mt ACL for 2023 and a 970-mt default ACL for 2024 (see Table 1). These sub-ACLs have no associated regulatory or management requirements, but provide a ceiling on overall landings by the LAGC IFQ fleets. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to the LAGC IFQ-only fleet for fishing years 2023 and 2024 based on APL would be 518 mt for 2023 and 389 mt for 2024 (see Table 1). Each vessel's IFQ will be calculated from these allocations based on APL.

2. ACL and IFQ Allocation for Limited Access Scallop Vessels with IFQ Permits. For limited access scallop vessels with IFQ permits, this action implements a 94-mt ACL for 2023 and a default 97-mt ACL for 2024 (see Table 1). These sub-ACLs have no associated regulatory or management requirements, but provide a ceiling on overall landings by this fleet. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to limited access vessels with IFQ permits would be 52 mt for 2023 and 39 mt for 2024 (see Table 1). Each vessel's IFQ will be calculated from these allocations based on APL.

3. LAGC IFQ Trip Allocations for Scallop Access Areas. Framework 36 allocates LAGC IFQ vessels a fleet-wide number of trips for fishing year 2023 and no default trips for fishing year 2024 (see Table 9). The scallop catch associated with the total number of trips for all areas combined (571 trips) for fishing year 2023 is equivalent to the 5.5-percent of total projected catch from access areas.

Once the Regional Administrator has determined that the total number of LAGC IFQ access area trips have been, or are projected to be taken, the Nantucket Lightship North Scallop Rotational Area shall become part of the open area for LAGC IFQ vessels, and Area II would then be closed to LAGC IFQ fishing.

TABLE 9—FISHING YEARS 2023 AND 2024 LAGC IFQ TRIP ALLOCATIONS FOR SCALLOP ACCESS AREAS

Scallop access area	2023	2024 [1]
Nantucket Lightship-North/Area II	571	0
Total	571	0

[1] The LAGC IFQ access area trip allocations for the 2024 fishing year are subject to change through a future specifications action or framework adjustment.

4. NGOM Scallop Fishery Landing Limits. This action implements total allowable landings (TAL) in the NGOM of 434,311 lb (197,000 kg) for fishing year 2023. This action deducts 25,000 lb (11,340 kg) of scallops annually for 2023 and 2024 from the NGOM TAL to increase the overall Scallop RSA to fund scallop research. In addition, this action deducts 1 percent of the NGOM ABC from the NGOM TAL for fishing years 2023 and 2024 to support the industry-funded observer program to help defray the cost to scallop vessels that carry an observer (Table 10).

Framework 36 sets an NGOM Set-Aside of 380,855 lb (172,753 kg) for fishing year 2023 and a default NGOM Set-Aside of 285,641 lb (211,365 kg) for fishing year 2024. Because the NGOM Set-Aside for fishing years 2023 and 2024 is below the 800,000-lb (362,874-kg) trigger, Framework 36 does not allocate any landings to the NGOM APL. Table 10 describes the breakdown of the NGOM TAL for the 2023 and 2024 (default) fishing years.

TABLE 10—NGOM SCALLOP FISHERY LANDING LIMITS FOR FISHING YEAR 2023 AND 2024

Landings limits	2023		2024 [1]	
NGOM TAL	434,311 lb	197,000 kg	318,573 lb	114,502 kg.[3]
1 percent NGOM ABC for Observers	10,538 lb	4,780 kg	7,932 lb	3,598 kg.[3]
RSA Contribution	25,000 lb	11,340 kg	25,000 lb	11,340 kg.
NGOM Set-Aside	380,855 lb	172,753 kg [2]	285,641 lb	129,565 kg.
NGOM APL	([4])	([4])	([4])	([4]).

[1] The landings limits for the 2024 fishing year are subject to change through a future specifications action or framework adjustment.
[2] For fishing year 2023, the NGOM Set-Aside has been reduced by 17,918 lb (8,127 kg) to account for a limited access general category NGOM total allowable catch overage in 2021.
[3] The catch limits for the 2024 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2024 that will be based on the 2023 annual scallop surveys.
[4] NGOM APL is set when the NGOM Set-Aside is above 800,000 lb (36,2874 kg).

Scallop Incidental Landings Target TAL

This action implements a 50,000-lb (22,680-kg) scallop incidental landings target TAL for fishing years 2023 and 2024 to account for mortality from vessels that catch scallops while fishing for other species and ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

RSA Harvest Restrictions

This action allows vessels participating in RSA projects to harvest RSA compensation from the open area only. All vessels are prohibited from harvesting RSA compensation pounds in all access areas. Vessels are prohibited from fishing for RSA compensation in the NGOM unless the vessel is fishing an RSA compensation trip using NGOM RSA allocation that was awarded to an RSA project. Finally, Framework 36 prohibits the harvest of RSA from any access areas under default 2024 measures. At the start of 2024, RSA compensation may only be harvested from open areas. The Council will re-evaluate this default prohibition measure in the action that would set final 2024 specifications.

Regulatory Corrections Under Regional Administrator Authority

This rule includes revisions to address regulatory text that is unnecessary, outdated, or unclear. The revisions at § 648.14(i)(1)(i), (ii), (iv)(A) and (B), would clarify that these paragraphs are referring to Federal scallop permits. Other revisions at § 648.14(i)(1)(vi)(A)(*2*) would clarify that a vessel can transit Habitat Management Areas provided that its gear is stowed and not available for immediate use as defined in § 648.2. Additional revisions at § 648.52(d) would update a reference to Scallop Rotational Access Area allocations.

This rule also changes the in-shell possession limit of scallops from a bushel conversion (1 bushel of in-shell scallops = 8 lb (3.6 kg) of scallop meats) to a weight conversion (8.33 lb (3.78 kg) of in-shell scallops = 1 lb (0.45 kg) of scallop meats). NMFS is making this adjustment to provide more uniformity among the possession limit measurements by revising the in-shell possession limit to a widely accepted poundage conversion. The revision to the in-shell possession limit is resource neutral because NMFS already uses this conversion to charge an LAGC vessel's IFQ and/or the NGOM Set-Aside. Furthermore, this change will continue to support the boutique in-shell scallop fishery by retaining an in-shell possession limit for this fleet. The revisions at § 648.2 'bushel' definition, § 648.14(i)(2)(ii)(A) and (B), (i)(2)(iii)(B), (i)(2)(vi)(D), § 648.51(a), throughout § 648.52, and at § 648.59(b)(3)(i), change the in-shell possession limit of scallops from a bushel conversion to a lb conversion.

All revisions discussed in this section are consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act.

Comments and Responses

We received no comments on the proposed rule.

Changes From the Proposed Rule

There are no changes from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act and other applicable law.

The Office of Management and Budget has determined that this rule is not significant pursuant to E.O. 12866.

This final rule does not contain policies with federalism or ''takings'' implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any collection-of-information requirements subject to the Paperwork Reduction Act (PRA).

The Assistant Administrator for Fisheries has determined that the need to implement the measures of this rule in an expedited manner is necessary to achieve conservation objectives for the scallop fishery and certain fish stocks. This constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in the date of effectiveness and to make the final Framework 36 measures effective upon filing for public inspection with the Office of the Federal Register. The 2023 fishing year begins on April 1, 2023. The New England Fishery Management Council adopted Framework 36 to the Atlantic Sea Scallop FMP on December 7, 2022, and submitted a preliminary draft of Framework 36 to NMFS on January 30, 2023. NMFS has taken all diligent steps to promulgate this rule as quickly as possible.

If Framework 36 is delayed beyond April 1, certain default measures, including access area designations, DAS, IFQ, RSA, and observer set-aside allocations, would automatically be put into place. Most of these default allocations are set at higher harvest levels than what would be implemented under Framework 36. Although these default allocations were intentionally set at levels low enough to avoid exceeding the final Framework 36 allocations, the 2022 scallop survey found lower than expected harvestable biomass in some areas. As a result, some of the default measures implemented for 2023 exceed those that are proposed in Framework 36, such that the fishery would be negatively impacted by a delayed implementation.

The survey in the NGOM in 2022 found lower than expected harvestable biomass in the area. As a result, the default allocation in the NGOM is above the Framework 36 allocation (Default: 465,980 lb (211,365 kg); Framework 36: 380,855 lb (172,753 kg)). This fishery is prosecuted quickly, landing over 11,000 lb/day (4,990 kg/day) in fishing year 2022. A delay in implementation could lead to fishing the NGOM at a higher fishing mortality than intended. This has happened in the past as a result of delayed implementation. For instance, this year we are implementing a 17,918-lb (8,127-kg) accountability measure for an overage in the NGOM that occurred when the fishing year 2021 specifications were implemented late.

Overall, the 2022 scallop survey found lower than expected harvestable biomass. This resulted in a Framework 36 IFQ allocation that is lower than the default allocation (Default: 1,177,268 lb (534,000 kg); Framework 36: 1,142,890 lb (518,406 kg)). If Framework 36 is not implemented by April 1, 2023, a mid-season reduction of IFQ allocations will be required when the framework becomes effective. This will cause confusion throughout the IFQ fleet and will be burdensome because many vessel owners lease all, or a portion of, their IFQ at the beginning of the season. A mid-season reduction in IFQ can lead to unintentional IFQ overages. In addition to the IFQ allocation adjustment, default measures allocate trips for the IFQ fleet into Area I, which will be closed under Framework 36 to protect small scallops.

Under default measures, each full-time vessel has 18 DAS and 1 access area trip for 15,000 lb (6,804 kg) in Area II. In addition to 5 U.S.C. 553(d)(3), we waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(1) because this action relieves restrictions by providing full-time vessels with an additional 6

DAS (24 DAS total) and 9,000 lb (4,082 kg) in access area allocations (24,000 lb (10,886 kg) total). Framework 36 also expands the footprint of Area II allowing the fleet to fish Area II in a more sustainable manner. Accordingly, this action also prevents more restrictive aspects of the default measures from going into place.

Framework 36 could not have been put into place sooner to allow for a 30-day delayed effectiveness because the information and data necessary for the Council to develop the framework was not available in time for this action to be forwarded to NMFS and implemented by April 1, 2023, the beginning of the scallop fishing year. Delaying the implementation of this action for 30 days would delay positive economic benefits to the scallop fleet, could negatively impact the access area rotation program by delaying fishing in areas that should be available, and could adversely affect scallop stocks.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has completed a final regulatory flexibility analysis (FRFA) in support of Framework 36, as included below. This FRFA incorporates the IRFA, a summary of the significant issues raised by public comments in response to the IRFA, NMFS' responses to those comments, a summary of the analyses completed in the Framework 36 EA, and the preamble to this final rule. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 36 and in the preambles to the proposed rule and this final rule and are not repeated here. All of the documents that constitute the FRFA (including the preambles of the proposed and final rules) are available from NMFS and/or the Council, and a copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**).

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

We received no comments on the IRFA or on the more general economic impacts of the rule.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

These regulations would apply to all vessels with limited access and LAGC scallop permits, and there would be economic impacts to small entities. Those impacts are described in detail in the draft of Framework 36, specifically, in the IRFA (Section 7.13) and in the Economic and Social Impacts section (Section 6.6). Framework 36 (Section 5.6) provides extensive information on the number of vessels that are affected by this action, their home and principal state, dependency on the scallop fishery, and revenues and profits (see **ADDRESSES**). There were 315 vessels that held full-time limited access permits in fishing year 2021, including 250 dredge, 54 small-dredge, and 11 scallop trawl permits. In the same year, there were also 29 part-time limited access permits in the sea scallop fishery. No vessels were issued occasional scallop permits in 2021. In 2019, NMFS reported that there were a total of 300 IFQ only permits, with 212 issued and 88 in a Confirmation of Permit History (CPH). There were a total of 110 NGOM permits issued in 2019. About 114 of the IFQ vessels and 53 NGOM vessels actively fished for scallops in fishing year 2021. The remaining IFQ permits likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History. Section 6.6 of Framework 36 provides extensive information on the number and size of vessels that would be affected by the proposed regulations, their home and principal state, dependency on the scallop fishery, and revenues and profits (see **ADDRESSES**).

For RFA purposes, NMFS defines a small business in a shellfish fishery as a firm that is independently owned and operated with receipts of less than $11 million annually (see 50 CFR 200.2). Individually permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by this action. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, ''ownership entities'' are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an ''ownership entity.'' For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ''ownership entity,'' that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate ''ownership entity'' for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2021 permits and contains average gross sales associated with those permits for calendar years 2019 through 2021. Matching the potentially impacted 2021 fishing year permits described above (limited access and LAGC IFQ) to calendar year 2021 ownership data results in 147 distinct ownership entities for the limited access fleet and 87 distinct ownership entities for the LAGC IFQ fleet. Based on the Small Business Administration (SBA) guidelines, 139 of the limited access distinct ownership entities and 87 LAGC IFQ entities are categorized as small. Eight limited access and no LAGC IFQ entities are categorized as large business entities with annual fishing revenues over $11 million in 2021. There were 52 distinct small business entities with NGOM permits in 2021.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

This action contains no new collection-of-information, reporting, or recordkeeping requirements. This final rule does not require specific action on behalf of regulated entities other than to ensure they stay within the specifications that are set.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

During the development of Framework 36, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. Framework 36 increases the opportunity for LAGC IFQ vessels to operate in access areas by allowing LAGC IFQ vessels to fish in Area II for the first time. Area II is an access area that is offshore and has historically been difficult for the LAGC fleet to access. Framework 36 allows the LAGC IFQ fleet to fish 2023 access area trips in either Nantucket Lightship North or Area II. This could have potentially slight positive impacts on the resource overall by spreading effort out and providing more access in areas with higher catch rates. It also could potentially reduce total area swept since, the LAGC IFQ component would have the opportunity to fish on high

densities of scallops in all open access areas. Alternatives to the measures in this final rule are described in detail in Framework 36, which includes an EA, RIR, and IRFA (see **ADDRESSES**). The measures implemented by this final rule minimize the long-term economic impacts on small entities to the extent practicable. The only alternatives for the prescribed catch limits that were analyzed were those that met the legal requirements to implement effective conservation measures. Specifically, catch limits must be derived using SSC-approved scientific calculations based on the Scallop FMP. Moreover, the limited number of alternatives available for this action must also be evaluated in the context of an ever-changing FMP, as the Council has considered numerous alternatives to mitigating measures every fishing year in amendments and frameworks since the establishment of the FMP in 1982.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality rates that promote stock rebuilding, and as a result, maximize optimal yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule and will designate such publications as ''small entity compliance guides.'' The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a bulletin to permit holders that also serves as a small entity compliance guide was prepared. This final rule and the guide (*i.e.,* bulletin) will be sent via email to the Greater Atlantic Regional Fisheries Office scallop email list and are available on the website at: *https://www.fisheries.noaa.gov/action/framework-adjustment-36-atlantic-sea-scallop-fishery-management-plan.* Hard copies of the guide and this final rule will be available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 29, 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 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.*

Subpart A—General Provisions

■ 2. In § 648.2, revise the definition of ''bushel'' to read as follows:

§ 648.2 Definitions.

* * * * *

Bushel (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft^3 (53.24 L) of surfclams or ocean quahogs in shell.

* * * * *

■ 3. In § 648.14, revise paragraphs (i)(1)(i) and (ii), (i)(1)(iv)(A) and (B), (i)(1)(vi)(A)(*2*), (i)(2)(ii)(A), (i)(2)(ii)(B) introductory text, (i)(2)(iii)(B), (i)(2)(vi)(B) and (D), and (i)(3)(v)(E) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(i) *Permit requirement.* Fish for, possess, or land scallops without the vessel having been issued and carrying onboard a valid Federal scallop permit in accordance with § 648.4(a)(2), unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

(ii) *Gear and crew requirements.* Have a shucking or sorting machine on board a vessel while in possession of more than 600 lb (272.2 kg) of shucked scallops, unless that vessel has not been issued a Federal scallop permit and fishes exclusively in state waters.

* * * * *

(iv) * * *

(A) Land, offload, remove, or otherwise transfer; or attempt to land, offload, remove or otherwise transfer; scallops from one vessel to another, unless that vessel has not been issued a Federal scallop permit and fishes exclusively in state waters.

(B) Sell, barter, or trade, or otherwise transfer scallops from a vessel; or attempt to sell, barter or trade, or otherwise transfer scallops from a vessel; for a commercial purpose, unless the vessel has been issued a valid Federal scallop permit pursuant to § 648.4(a)(2), or the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

* * * * *

(vi) * * *

(A) * * *

(*2*) Transit or enter the Habitat Management Areas specified in § 648.370, except as provided by § 648.370(i).

* * * * *

(2) * * *

(ii) * * *

(A) Possess more than 40 lb (18.1 kg) of shucked, or 333 lb (151 kg) of in-shell scallops, or participate in the scallop DAS or Area Access programs, while in the possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(1), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program.

(B) While under or subject to the DAS allocation program, in possession of more than 40 lb (18.1 kg) of shucked scallops or 333 lb (151 kg) of in-shell scallops, or fishing for scallops in the EEZ:

* * * * *

(iii) * * *

(B) Fish for, possess, or land more than 3,332 lb (1,511 kg) of in-shell scallops inside the VMS Demarcation Line on or by a vessel, except as provided in the state waters exemption, as specified in § 648.54.

* * * * *

(vi) * * *

(B) Transit the Area II Scallop Rotational Area or the New York Bight Scallop Rotational Area, as defined in § 648.60(b) and (j), unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(C) * * *

(D) Possess more than 3,332 lb (1,511 kg) of in-shell scallops outside the boundaries of a Scallop Access Area by a vessel that is declared into the Scallop Access Area Program as specified in § 648.59.

* * * * *

(3) * * *

(v) * * *

(E) Transit the Area II Scallop Rotational Area or New York Bight Scallop Rotational Area, as defined in § 648.60(b) and (j), unless there is a compelling safety reason for transiting

the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

■ 4. In § 648.51, revise paragraphs (a) introductory text and (f)(1) to read as follows:

§ 648.51 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels issued a limited access scallop permit under § 648.4(a)(2) while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), any trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 333 lb (151 kg) of in-shell scallops in or from the EEZ, and any trawl vessels fishing for scallops in the EEZ, must comply with the following:

* * * * *

(f) * * *

(1) *Restrictions.* A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of a trawl net, unless such vessel has been issued a limited access trawl vessel permit that endorses the vessel to fish for scallops with a trawl net. A limited access scallop vessel issued a trawl vessel permit that endorses the vessel to fish for scallops with a trawl net and general category scallop vessels enrolled in the Area Access Program as specified in § 648.59, may not fish for scallops with a trawl net in the Area II Rotational Area specified in § 648.60(b).

* * * * *

■ 5. In § 648.52, revise paragraphs (a) through (f) to read as follows:

§ 648.52 Possession and landing limits.

(a) *IFQ trips*—(1) *Open area trips.* A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery in the open area, as specified in § 648.10(f), or on a properly declared NE multispecies, surfclam, or ocean quahog trip (or other fishery requiring a VMS declaration) and not fishing in a scallop access area, unless as specified in paragraph (g) of this section or exempted under the state waters exemption program described in § 648.54, may not possess or land, per trip, more than 600 lb (272 kg) of shucked scallops, or possess more than 4,998 lb (2,267 kg) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 6,664 lb (3,023 kg) of in-shell scallops seaward of the VMS Demarcation Line on a properly declared IFQ scallop trip, or on a properly declared NE multispecies, surfclam, or ocean quahog trip, or other fishery requiring a VMS declaration, and not fishing in a scallop access area.

(2) *Access area trips.* A vessel issued an IFQ scallop permit that is declared into the IFQ Scallop Access Area Program, as specified in § 648.10(f), may not possess or land, per trip, more than 800 lb (363 kg) of shucked scallops, or possess more than 6,664 lb (3,023 kg) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 6,664 lb (3,023 kg) of in-shell scallops seaward of the VMS Demarcation Line on a properly declared IFQ scallop access area trip.

(b) *NGOM trips.* A vessel issued a NGOM scallop permit, or an IFQ scallop permit that is declared into the NGOM scallop fishery and fishing against the NGOM Set-Aside as described in § 648.62, unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked scallops, or possess more than 1,666 lb (756) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 3,332 lb (1,511 kg) of in-shell scallops seaward of the VMS demarcation line on a properly declared NGOM scallop fishery trip.

(c) *Incidental trips.* A vessel issued an Incidental scallop permit, or an IFQ scallop permit that is not declared into the IFQ scallop fishery or on a properly declared NE multispecies, surfclam, or ocean quahog trip or other fishery requiring a VMS declaration as required under § 648.10(f), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 40 lb (18.1 kg) of shucked scallops, or possess more than 333 lb (151 kg) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 666 lb (302 kg) of in-shell scallops seaward of the VMS Demarcation Line.

(d) *Limited access vessel access area trips.* Owners or operators of vessels with a limited access scallop permit that have properly declared into the Scallop Access Area Program as described in § 648.59 are prohibited from fishing for or landing per trip, or possessing at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.59(b)(3).

(e) *Limited access vessel open area in-shell scallop possession limit.* Owners or operators of vessels issued limited access permits are prohibited from fishing for, possessing, or landing per trip more than 3,332 lb (1,511 kg) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

(f) *Limited access vessel access area in-shell scallop possession limit.* A limited access vessel that is declared into the Scallop Area Access Program as described in § 648.59, may not possess more than 3,332 lb (1,511 kg) of in-shell scallops outside of the Access Areas described in § 648.60.

* * * * *

■ 6. In § 648.53, revise paragraphs (a)(9) and (b)(3) to read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

(a) * * *

(9) *Scallop fishery catch limits.* The following catch limits will be effective for the 2023 and 2024 fishing years:

TABLE 2 TO PARAGRAPH (a)(9)—SCALLOP FISHERY CATCH LIMITS

Catch limits	2023 (mt)	2024 (mt) [1]
OFL	27,504	29,151
ABC/ACL (discards removed)	19,828	20,206
Incidental Landings	23	23
RSA	578	578
Observer Set-Aside	198	202
NGOM Set-Aside	175	130

TABLE 2 TO PARAGRAPH (a)(9)—SCALLOP FISHERY CATCH LIMITS—Continued

Catch limits	2023 (mt)	2024 (mt) [1]
ACL for fishery	18,853	19,403
Limited Access ACL	17,816	18,335
LAGC Total ACL	1,037	1,067
LAGC IFQ ACL (5 percent of ACL)	943	970
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	94	97
Limited Access ACT	15,441	15,891
APL (after set-asides removed)	10,368	([1])
Limited Access APL (94.5 percent of APL)	9,798	([1])
Total IFQ Annual Allocation (5.5 percent of APL) [2]	570	428
LAGC IFQ Annual Allocation (5 percent of APL) [2]	518	389
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	52	39

[1] The catch limits for the 2024 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2024 that will be based on the 2023 annual scallop surveys. The 2024 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

[2] As specified in paragraph (a)(6)(iii)(B) of this section, the 2024 IFQ annual allocations are set at 75 percent of the 2023 IFQ Annual Allocations.

(b) * * *

(3) *DAS allocations.* The DAS allocations for limited access scallop vessels for fishing years 2023 and 2024 are as follows:

TABLE 3 TO PARAGRAPH (b)(3)—SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2023	2024 [1]
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

[1] The DAS allocations for the 2024 fishing year are subject to change through a future specifications action or framework adjustment. The 2024 DAS allocations are set at 75 percent of the 2023 allocation as a precautionary measure.

* * * * *

■ 7. In § 648.59, revise paragraphs (a)(2) and (3), (b)(3)(i), (b)(6)(ii), (c), (e)(1) and (2), (g)(1), (g)(3)(v), and (g)(4)(ii) to read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

(a) * * *

(2) *Transiting a Scallop Rotational Closed Area.* No vessel possessing scallops may enter or be in the area(s) specified in this section when those areas are closed, as specified through the specifications or framework adjustment processes defined in § 648.55, unless the vessel is transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the New York Bight Scallop Rotational Area, as defined in § 648.60(j), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(3) *Transiting a Scallop Rotational Access Area.* Any sea scallop vessel that has not declared a trip into the Scallop Access Area Program may enter a Scallop Access Area, and possess scallops not caught in the Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2. Any scallop vessel that has declared a trip into the Scallop Area Access Program may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area provided its gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Area II Scallop Rotational Area, as defined in § 648.60(b), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(b) * * *

(3) * * *

(i) *Limited access vessel allocations and possession limits.* (A) Except as provided in paragraph (c) of this section, the specifications or framework adjustment processes defined in § 648.55 determine the total amount of scallops, in weight, that a limited access scallop vessel may harvest from Scallop Access Areas during applicable seasons specified in § 648.60. A vessel may not possess or land in excess of its scallop allocation assigned to specific Scallop Access Areas, unless authorized by the Regional Administrator, as specified in paragraph (d) of this section, unless the vessel owner has exchanged an area-specific scallop allocation with another vessel owner for additional scallop allocation in that area, as specified in paragraph (b)(3)(ii) of this section. A vessel may harvest its scallop allocation on any number of trips in a given fishing year, provided that no single trip exceeds the possession limits specified in the specifications or framework adjustment processes defined in § 648.55, unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section. No vessel declared into the Scallop Access Areas may possess more than 3,332 lb (1,511 kg) of in-shell scallops outside of the Scallop Rotational Area boundaries defined in § 648.60.

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2023 and 2024 fishing years:

(*1*) *Full-time vessels.* (*i*) For a full-time limited access vessel, the possession limit and allocations are:

TABLE 1 TO PARAGRAPH (b)(3)(i)(B)(*1*)(*i*)

Rotational access area	Scallop possession limit	2023 Scallop allocation	2024 Scallop allocation (default)
Area II	12,000 lb (5,443 kg) per trip	24,000 lb (10,886 kg)	0 lb (0 kg).
Total		24,000 lb (10,886 kg)	0 lb (0 kg).

(*ii*) [Reserved]

(*2*) *Part-time vessels.* (*i*) For a part-time limited access vessel, the possession limit and allocations are as follows:

TABLE 2 TO PARAGRAPH (b)(3)(i)(B)(*2*)(*i*)

Rotational access area	Scallop possession limit	2023 Scallop allocation	2024 Scallop allocation (default)
Area II	9,600 lb (4,082 kg) per trip	9,600 lb (4,354 kg)	0 lb (0 kg).
Total		9,600 lb (4,354 kg)	0 lb (0 kg).

(*ii*) [Reserved]

(*3*) *Occasional limited access vessels.* (*i*) For the 2023 fishing year only, an occasional limited access vessel is allocated 2,000 lb (907 kg) of scallops with a trip possession limit at 2,000 lb of scallops per trip (907 kg per trip). Occasional limited access vessels may harvest the 2,000 lb (907 kg) allocation from Area II Access Area.

(*ii*) For the 2024 fishing year, occasional limited access vessels are not allocated scallops in any rotational access area.

* * * * *

(6) * * *

(ii) Vessels fishing in the Area II Scallop Rotational Area defined in § 648.60(b) are prohibited from fishing with trawl gear as specified in § 648.51(f)(1).

* * * * *

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. However, the vessel may not exceed the Scallop Rotational Area trip possession limit. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Closed Area II Access Area at the end of fishing year 2022, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Closed Area II Access Area is open in fishing year 2023 (April 1, 2023 through May 30, 2023).

* * * * *

(e) * * *

(1) *2023:* Nantucket Lightship-North Scallop Rotational Area only for LAGC IFQ vessels during the first 90 days of fishing year 2023.

(2) *2024:* No access areas.

* * * * *

(g) * * *

(1) An LAGC scallop vessel may only fish in the scallop rotational areas specified in § 648.60 or in paragraph (g)(3)(iv) of this section, subject to any additional restrictions specified in § 648.60, subject to the possession limit and access area schedule specified in the specifications or framework adjustment processes defined in § 648.55, provided the vessel complies with the requirements specified in paragraphs (b)(1), (2), and (6) through (9) and (d) through (g) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Area II and Nantucket Lightship North Scallop Rotational Area specified in § 648.60, when open, provided the vessel complies with the requirements specified in § 648.59 and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

* * * * *

(3) * * *

(v) *LAGC IFQ access area allocations.* The following LAGC IFQ access area trip allocations will be effective for the 2023 and 2024 fishing years:

TABLE 3 TO PARAGRAPH (g)(3)(v)

Scallop access area	2023	2024 [1]
Nantucket Lightship—North/Area II	571	0
Total	571	0

[1] The LAGC IFQ access area trip allocations for the 2024 fishing year are subject to change through a future specifications action or framework adjustment.

(4) * * *

(ii) *Other species.* Unless issued an LAGC IFQ scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Area II Rotational Area specified in § 648.60, and the Nantucket Lightship North Scallop Access Area specified in paragraph (g)(3)(iv) of this section is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8)(i). Such a vessel may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided that it has not declared into the Scallop Access Area Program. Such a vessel is prohibited from fishing for, possessing, or landing scallops.

■ 8. In § 648.60,

■ a. Revise paragraphs (b) and (c);

■ b. Remove and reserve paragraphs (d) and (e);

■ c. Revise paragraph (g);

■ d. Remove and reserve paragraph (h);

■ e. Revise paragraphs (i) and (j); and

■ f. Add paragraph (k).

The revisions and addition read as follows:

§ 648.60 Sea Scallop Rotational Areas.

* * * * *

(b) *Area II Scallop Rotational Area*—(1) *Area II Scallop Rotational Area boundary.* The Area II Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 1 TO PARAGRAPH (b)(1)

Point	N latitude	W longitude	Note
AII1	41°30′	67°20′	
AII2	41°30′	(1)	(2)
AII3	40°40′	(3)	(2)
AII4	40°40′	67°20′	
AII1	41°30′	67°20′	

[1] The intersection of 41°30′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30′ N lat., 66°34.73′ W long.
[2] From Point AII2 connected to Point AII3 along the U.S.-Canada Maritime Boundary.
[3] The intersection of 40°40′ N lat. and the U.S.-Canada Maritime Boundary, approximately 40°40′ N lat. and 65°52.61′ W long.

(2) *Season.* (i) A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Area II Scallop Rotational Area, defined in paragraph (b)(1) of this section, during the period of August 15 through November 15 of each year the Area II Access Area is open to scallop vessels, unless transiting pursuant to § 648.59(a).

(ii) [Reserved]

(c) *Area I Scallop Rotational Area.* The Area I Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 2 TO PARAGRAPH (c)

Point	N latitude	W longitude
AIA1	41°30′	68°30′
AIA2	40°58′	68°30′
AIA3	40°54.95′	68°53.37′
AIA4	41°30′	69°23′
AIA1	41°30′	68°30′

* * * * *

(g) *Nantucket Lightship—North Scallop Rotational Area*—(1) *Boundaries.* The Nantucket Lightship North Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 3 TO PARAGRAPH (g)(1)

Point	N latitude	W longitude
NLSN1	40°50′	69°30′
NLSN2	40°50′	69°00′
NLSN3	40°28′	69°00′
NLSN4	40°28′	69°30′

TABLE 3 TO PARAGRAPH (g)(1)—Continued

Point	N latitude	W longitude
NLSN1	40°50′	69°30′

(2) *Season.* (i) For the 2023 fishing year, a limited access vessel may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship North Scallop Rotational Area, defined in paragraph (g)(1) of this section, during the period of April 1 through June 29, unless transiting pursuant to § 648.59(a). One June 30, the Nantucket Lightship North Scallop Rotational Area shall become part of the open area for limited access vessels.

(ii) For the 2023 fishing year, upon a determination from the Regional Administrator that the total number of LAGC IFQ access area trips have been or are projected to be taken, the Nantucket Lightship North Scallop Rotational Area shall become part of the open area for LAGC IFQ vessels.

* * * * *

(i) *Nantucket Lightship—West Scallop Rotational Area.* The Nantucket Lightship-West Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 4 TO PARAGRAPH (i)

Point	N latitude	W longitude
NLSW1	40°43.44′	70°20′
NLSW2	40°43.44′	70°00′
NLSW3	40°43.44′	69°30′
NLSW4	40°20′	69°30′
NLSW5	40°20′	70°00′
NLSW6	40°26.63′	70°20′
NLSW1	40°43.44′	70°20′

(j) *New York Bight Scallop Rotational Area.* The New York Bight Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 5 TO PARAGRAPH (j)

Point	N latitude	W longitude
NYB1	40°00′	73°20′
NYB2	40°00′	72°30′
NYB3	39°20′	72°30′
NYB4	39°20′	73°20′
NYB1	40°00′	73°20′

(k) *Elephant Trunk Scallop Rotational Area.* The Elephant Trunk Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 6 TO PARAGRAPH (k)

Point	N latitude	W longitude
ET1	38°50′	74°20′
ET2	38°50′	73°30′
ET3	38°10′	73°30′
ET4	38°10′	74°20′
ET1	38°50′	74°20′

■ 9. In § 648.62, revise paragraph (b)(1) to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(b) * * *

(1) The following landings limits will be effective for the NGOM for the 2023 and 2024 fishing years.

TABLE 1 TO PARAGRAPH (b)(1)

Landings limits	2023	2024 [1]
NGOM TAL	434,311 lb (197,000 kg)	318,573 (114,502 kg)([3]).
1 percent NGOM ABC for Observers	10,538 lb (4,780 kg)	7,932 (3,598 kg)([3]).
RSA Contribution	25,000 lb (11,340 kg)	25,000 lb (11,340 kg).
NGOM Set-Aside [2]	380,855 lb (172,753 kg)	285,641 lb (129,565 kg).
NGOM APL	([4])	([4]).

[1] The landings limits for the 2024 fishing year are subject to change through a future specifications action or framework adjustment.
[2] For fishing year 2023 the NGOM Set-Aside has been reduced by 17,918 lb (8,127 kg) to account for a limited access general category NGOM total allowable catch overage in 2021.
[3] The catch limits for the 2024 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2024 that will be based on the 2023 annual scallop surveys.
[4] NGOM APL is set when the NGOM Set-Aside is above 800,000 lb (36,2874 kg).

* * * * *

[FR Doc. 2023–06873 Filed 3–31–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 63
Monday, April 3, 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 Highway Administration

23 CFR Part 661

[FHWA Docket No. FHWA–2019–0039]

RIN 2125–AF91

Tribal Transportation Facility Bridge Program

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would update the existing Tribal Transportation Program Bridge Program, formerly known as the Indian Reservation Road (IRR) Bridge Program, by renaming it the Tribal Transportation Facility Bridge Program (TTFBP) to comply with the changes made in the Moving Ahead for Progress in the 21st Century Act (MAP–21), carried on through the Fixing America's Surface Transportation (FAST) Act, and the recent changes made by the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA). It would also remove references to terms such as structurally deficient, functionally obsolete, and sufficiency rating. These updates would align the TTFBP terminology for bridge conditions with the terminology used for State departments of transportation (State DOT) in the Federal-aid highway program. This change would establish a consistent terminology for classifying and referring to bridge conditions.

DATES: Comments must be received on or before June 2, 2023. Late-filed comments will be considered to the extent practicable.

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, the FHWA will hold four public information, education, and consultation meetings during the public comment period to explain the rule, answer questions, and take oral testimony. While a court reporter will document these meetings, attendees are encouraged to submit written public comments. Three meetings will be held in or near Indian country at the locations listed below and a fourth meeting will be held virtually. Additional information on the meetings may be found at *https://highways.dot.gov/federal-lands/programs-tribal/bridge.* FHWA will hold meetings on the following dates and locations:

1. April 4th, 2023, 2–3 p.m. EST, Virtual Listening Session by Webinar, *https://highways.dot.gov/federal-lands/programs-tribal/webinars;* Telephone: +1 551 285 1373; Meeting ID: 161 207 5615; Passcode: 042703.

2. April 20th, 2023, 9–11 a.m. MDT, Department of the Interior University, National Indian Programs Training Center, Albuquerque, NM.

3. May 17th, 2023, 9–11 a.m. CST, Great Northern Jerome Hill Theater, St. Paul, MN.

4. May 18th, 2023, 2–4 p.m. PDT, Northwest Region Transportation Symposium, Northern Quest Resort and Casino, Airway Heights, WA.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor Room W12–140, Washington, DC 20590;
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC 20590, between 9 a.m. 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329;
- *Instructions:* You must include the agency name and docket number or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comments. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Russell Garcia, P.E., Federal Lands Highway/Office of Tribal Transportation, *Russell.Garcia@dot.gov,* (703) 404–6223, or Michelle Andotra, Office of the Chief Counsel, *Michelle.Andotra@dot.gov,* (404) 562–3679, Federal Highway Administration, 60 Forsyth Street SW, Suite 8M5, Atlanta, GA 30303.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at *www.regulations.gov* using the docket number listed above. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's website at: *www.federalregister.gov* and the Government Publishing Office's website at: *www.GovInfo.gov.*

Background

Legal Authority

This regulatory action is necessary to update 23 CFR part 661 to reflect the changes made to the program since the last regulatory update in 2008. These changes are largely nomenclature changes to the existing regulation that FHWA has been implementing under 23 U.S.C. 202(d), and do not substantively change the TTFBP. Importantly, this proposed rule would align the TTFBP terminology for bridge conditions with the terminology used in the Federal-aid highway program for State DOTs. This change would establish a consistent terminology for classifying and referring to bridge conditions. In addition, this proposed rule would update the name of the program to TTFBP in every place where it formally appeared. Other proposed non-substantive changes to each section are outlined in the section-by-section discussion below.

Section-by-Section Discussion of the Proposed Amendments—(This discussion references the existing regulation, including prior nomenclature).

§ 661.3 Who must comply with this regulation?

The regulation applies to all Tribal Transportation Facility (TTF) bridges. FHWA proposes to delete the structurally deficient and functionally obsolete language to align the TTFBP

terminology for bridge conditions with the terminology used for State DOTs in the Federal-aid highway program. The remaining terminology used in this section is consistent with 23 CFR part 490, subpart D, National Performance Management Measures for Assessing Bridge Condition. Thus, this change would establish a consistent terminology for classifying and referring to bridge conditions. Also, FHWA proposes to delete the term ''Public Authorities'' and replace it with the term ''Tribes and Tribal Consortiums,'' as the eligible applicants under this program and covered by this regulation.

§ 661.5 What definitions apply to this regulation?

FHWA proposes to delete the following definitions: functionally obsolete, Indian Reservation Road (IRR), IRR bridge, life cycle cost analysis, Public Authority, structurally deficient, structure inventory and appraisal sheet, and sufficiency rating because these terms are no longer used in this regulation. Also, FHWA proposes to add the definitions of National Bridge Inventory (NBI), National Tribal Transportation Facility Inventory (NTTFI), operating rating, rehabilitation, replacement, Tribal Transportation Facility (TTF), and TTF bridge because this regulation uses these terms as qualifiers for projects.

§ 661.9 What is the total funding available for the IRRBP?

FHWA proposes to replace the specific funding amounts with a more generalized statement due to the complex nature of the funding for the TTFBP. The TTFBP website, *www.highways.dot.gov/federal-lands/programs-tribal/bridge* will provide additional information as the funds are made available.

§ 661.15 What are the eligible activities for IRRBP funds?

To provide a consistent means of classifying and referring to bridge conditions between the TTFBP and 23 CFR part 490, subpart D, FHWA proposes to delete the phrases ''structurally deficient'' and ''functionally obsolete'' and substitute ''are in poor condition, have low load capacity, or need highway geometric improvements'' to align the TTFBP terminology for bridge conditions with the terminology used for State DOTs in the Federal-aid highway program. The remaining terminology used in this section is consistent with 23 CFR part 490, subpart D. Thus, this change would establish a terminology for classifying and referring to bridge conditions. Also, FHWA proposes to incorporate the eligibility requirements of 23 U.S.C. 202(d), as amended by BIL.

§ 661.17 What are the criteria for bridge eligibility?

This section would delete the requirement for bridges to ''be located on an IRR that is included in the IRR Inventory'' to be consistent with the new Tribal Transportation Program (TTP) terminology used with 25 CFR part 170. To provide a consistent means of classifying and referring to bridge conditions, FHWA also proposes to delete the ''structurally deficient'' and ''functionally obsolete'' criterion and substitute a condition criterion that the bridge ''be classified as in poor condition.'' This would align the TTFBP terminology for bridge conditions with the terminology used for State DOTs in the Federal-aid highway program. The remaining terminology in this section is consistent with 23 CFR part 490, subpart D. Thus, this change would establish a consistent terminology for classifying and referring to bridge conditions. FHWA also proposes to add the ''low load capacity'' and ''need highway geometric improvements'' criteria, which would apply to bridges that are ''classified in poor condition, have a low load capacity, or need highway geometric improvements,'' in lieu of the ''structurally deficient or functionally obsolete'' classification set forth in paragraph 23 CFR 661.17(a)(3) of the existing regulations. FHWA also proposes to clarify the new criteria for bridge eligibility for new bridge construction. While the BIL adds eligibility for new bridge construction at 23 U.S.C. 202(d)(2)(A), the amendments at 23 U.S.C. 202(d)(1) and (3) also require bridges to be classified in poor condition, have a low load capacity, or needing geometric improvements. Since new bridges do not have a condition classification, a load capacity, or a need for geometric improvements, FHWA proposes to clarify that projects for new bridge construction do not need to meet this criterion. Further, FHWA proposes to delete paragraph (b) in the existing section, as the 10-year rule for bridge replacement or rehabilitation is now obsolete in the Federal-aid highway program.

§ 661.19 When is a bridge eligible for replacement?

The funding eligibility criteria set forth in 23 U.S.C. 202(d)(3), requires that a bridge: (A) have an opening of not less than 20 feet; (B) be classified as a tribal transportation facility; and (C) be structurally deficient or functionally obsolete. For consistency with the terminology used in 23 CFR part 490, subpart D, FHWA proposes to interpret the eligibility requirements for replacement under 23 U.S.C. 202(d)(3)(C) to mean that a bridge must be in poor condition, have low load capacity, or need highway geometric improvements. The proposed regulatory text reflects this interpretation. The ''poor condition'' classification would be consistent with 23 CFR part 490, subpart D. The new ''low load capacity'' and ''need highway geometric improvements'' criteria would align with the ''functionally obsolete'' classification in the existing regulations.

§ 661.21 When is a bridge eligible for rehabilitation?

The eligibility criteria in 23 U.S.C. 202(d)(3) provide, as set forth above, that bridges must be either structurally deficient or functionally obsolete to be eligible to receive funding. However, for consistency with the terminology used in 23 CFR part 490 subpart D, FHWA proposes to interpret the eligibility requirements for rehabilitation under 23 U.S.C. 202(d)(3)(C) to mean that a bridge must be in poor or fair condition, have low load capacity, or need highway geometric improvements. FHWA proposes regulatory text consistent with this interpretation. The poor or fair condition criterion is a classification consistent with 23 CFR part 490, subpart D. The new ''low load capacity'' and ''need highway geometric improvements'' criteria would align with the ''functionally obsolete'' classification in the existing regulations.

§ 661.23 How will a bridge project be programmed for funding once eligibility has been determined?

The eligibility criteria set forth in 23 U.S.C. 202(d)(3) provide, among other things, that bridges must be either structurally deficient or functionally obsolete to receive funding. However, consistent with the terminology used in 23 CFR part 490, subpart D, FHWA proposes to substitute the bridge sufficiency rating criterion and the bridge status criterion of ''structurally deficient'' and ''functionally obsolete'' with a condition rating of ''good,'' ''fair,'' or ''poor.'' FHWA proposes to use these condition ratings as the criteria for ranking and prioritizing the bridge projects in the queue for funding, together with the existing criteria set forth in 23 CFR 661.23(b)(3)–(6).

In the proposed paragraph (a), FHWA refers to ''non-BIA/non-tribally owned'' instead of ''non-BIA owned.'' In the proposed paragraph (b)(2), FHWA replaces the existing criteria language with ''Low load capacity bridges based

on Operating Rating.'' In paragraphs (b)(5) and (b)(6), FHWA proposes to change the criteria based on an annual average so that they would refer to annual average daily traffic and annual truck daily traffic, respectively. These changes are consistent with the National Bridge Inventory (NBI). Also, FHWA proposes to define the criteria for rating a bridge as being in poor, fair, and good condition, consistent with 23 CFR part 490, subpart D. These criteria are proposed to be included in a new paragraph (d).

§ 661.25 What does a complete application package for Preliminary Engineering consist of and how does the project receive funding?

FHWA proposes to reorganize this provision. Proposed paragraph (a) would list the elements of a complete application package for preliminary engineering (PE) in numbered subparagraphs (a)(1)–(6), including two proposed changes. In subparagraph (a)(5), FHWA proposes to replace the existing Structure Inventory and Appraisal (SI&A) requirement with a requirement for National Bridge Inventory (NBI) data, which shows the condition rating of the bridge. In subparagraph (a)(6), FHWA proposes to add a requirement for an acknowledgment by the Tribe of the project specific funding requirements and that any excess funds would be returned to FHWA for further distribution. This statement is consistent with the existing and proposed 23 CFR 661.41.

Proposed paragraph (b) would be unchanged except that it would refer to ''non-BIA/non-tribally owned TTF bridges'' instead of ''non-BIA IRR bridges.'' FHWA proposes to split the two statements in existing paragraph (c) to clarify in proposed paragraphs (c) and (d) that both items are necessary for a complete application. Lastly, FHWA proposes to redesignate existing paragraph (d) as paragraph (e) and to replace the reference to ''an FHWA/Tribal agreement'' with a reference to ''a TTP Program Agreement between FHWA and a Tribal Government or Consortium.''

§ 661.27 What does a complete application package for construction consist of and how does the project receive funding?

FHWA proposes to reorganize this provision. Proposed paragraph (a) would list the elements of a complete application package for construction in numbered subparagraphs, including the following proposed changes. In subparagraph (a)(3), FHWA proposes to replace the existing SI&A sheet requirement with a requirement for NBI data. FHWA proposes to relocate to subparagraph (a)(5) the provision that all environmental and archeological clearances and complete grants of public rights-of-way must be acquired prior to submittal of the construction application package. FHWA also proposes to add subparagraph (a)(6), which would require that a complete application package for construction include an acknowledgment by the Tribe of the project specific funding requirements and that any excess funds will be returned to FHWA for further distribution. This statement is consistent with the existing and proposed 23 CFR 661.41.

In addition, FHWA proposes to move the additional application package requirements from existing paragraph (a) to a new paragraph (b) and refer to ''non-BIA/non-tribally owned TTF bridges'' instead of ''non-BIA IRR bridges.'' FHWA proposes to split the two statements in existing paragraph (b) into proposed paragraphs (c) and (d) to clarify that both items are necessary for a complete application. In proposed paragraph (d), FHWA refers to ''TTF bridge projects'' instead of ''IRRBP projects.'' Finally, FHWA proposes to move existing paragraph (c) to a new paragraph (e) and replace the reference to ''an FHWA/Tribal agreement'' with a reference to ''Tribes, under a TTP Program Agreement between FHWA and a Tribal Government or Consortium, or the Secretary of the Interior upon availability of program funding at FHWA.''

§ 661.29 How does ownership impact project selection?

FHWA proposes to refer ''non-BIA/non-tribally owned TTF bridges'' instead of ''non-BIA owned IRR bridges.'' Also, FHWA proposes to modify the first sentence of the section to remove language regarding ''trust responsibilities,'' as this section pertains to priority of project selection.

§ 661.31 Do IRRBP projects have to be listed on an approved IRR TIP?

FHWA proposes to refer to ''FHWA TTP TIP'' instead of ''TTP TIP.'' Also, FHWA proposes to add a statement that TTF bridge projects included in the TTP TIP that are not fiscally constrained may still be included as a list of projects dependent upon the availability of additional resources also known as an ''illustrative list.''

§ 661.35 What percentage of IRRBP funding is available for use on BIA and Tribally owned IRR bridges, and non-BIA owned IRR bridges?

FHWA proposes to refer ''non-BIA/non-tribally owned TTF bridges'' instead of ''non-BIA owned IRR bridges.''

§ 661.37 What are the funding limitations on individual IRRBP projects?

FHWA is considering an adjustment to the funding limits for PE in paragraph (a) and for PE and construction in paragraph (b). The existing funding limits established by the 2008 final rule have not kept pace with increased costs in the last 15 years and adjustment may be necessary to allow increased flexibility. FHWA specifically requests comments on whether these amounts should be adjusted, the extent of any needed adjustment, and the experience of stakeholders in navigating these funding limitations. Data justifying commenter recommendations is specifically requested.

§ 661.45 What happens when IRRBP funds cannot be obligated by the end of the fiscal year?

FHWA proposes to add ''from the Highway Trust Fund'' as the funds described in this section subject to August Redistribution for any unobligated funds.

§ 661.47 Can bridge maintenance be performed with IRRBP funds?

The existing regulation cites a number of maintenance activities as examples of ineligible uses of IRRBP funds. FHWA proposes to add the modifier ''routine'' to bridge maintenance repairs on this list of ineligible uses of TTFBP funds.

§ 661.49 Can IRR Bridge Program funds be spent on Interstate, State Highway, and Toll Road IRR bridges?

FHWA proposes to add County, City, and Township TTF bridges as eligible for funding under the TTFBP if those bridges are eligible Tribal transportation facilities.

§ 661.53 What standards should be used for bridge design?

In paragraph (a), FHWA proposes to add ''New'' for the design standards to be used for new bridges.

§ 661.55 How are BIA and Tribal owned IRR bridges inspected?

FHWA proposes to add ''in-service'' to refer the inspection to in-service TTF bridges. Also, FHWA proposes to change the section references to the BIA regulations codified at 25 CFR part 170

pertaining to in-service TTF bridge inspections, because the sections referenced in our existing regulations no longer exist and have been renumbered. The outdated section references FHWA proposes to remove are 25 CFR 170.504–170.507. The new section references FHWA proposes to include are 25 CFR 170.513–170.514. *See* BIA, Tribal Transportation Program Final Rule, 81 FR 78456 (Nov. 7, 2016). This is an administrative update and not a change to the requirements to bridge inspections.

§ 661.57 How is a list of deficient bridges to be generated?

FHWA proposes to delete this section because it is not relevant to the purpose of this regulation as stated in § 661.1, to prescribe policies for project selection and fund allocation procedures for administering the TTFBP.

§ 661.59 What should be done with a deficient BIA owned IRR bridge if the Indian Tribe does not support the project?

FHWA proposes to reference 25 CFR 170.114(a)(1) which generally sets forth health and safety restrictions. Also, because of the elimination of § 661.57 of the existing regulation, FHWA proposes to change this section number from § 661.59 to § 661.57.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after the close of the comment period.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Rulemaking Policies and Procedures

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order (E.O.) 12866. Accordingly, OMB has not reviewed it. This action complies with E.O.s 12866 and 13563 to improve regulation. It is anticipated that the economic impact of this rulemaking would be minimal and that the benefits would outweigh the costs. The proposed changes are largely administrative and are expected to provide clarification of the existing regulations, including by removing outdated references. While it is not possible to quantify potential costs and benefits, FHWA expects that by making the terminology used in the TTFBP regulations consistent with that used in the Federal-aid highway program, the proposed changes will reduce confusion and facilitate implementation of the TTFBP. The proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. This proposed action would amend the existing regulations pursuant to Section 1119 of MAP–21, Section 1118 of the FAST Act, and Sections 11118, 14004, and Division J of the BIL, and would not fundamentally alter the funding available for the replacement or rehabilitation of TTF bridges in poor condition. For these reasons, FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $155 million or more in any one year (2 U.S.C. 1532). In addition, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility. Further, in compliance with the Unfunded Mandates Reform Act of 1995, FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, Tribal governments, and the private sector.

Executive Order 13132 (Federalism Assessment)

FHWA has analyzed this NPRM in accordance with the principles and criteria contained in E.O. 13132. FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal Agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. FHWA has determined that this action does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have a significant effect on the quality of the environment and qualifies for the categorical exclusion at 23 CFR 771.117(c)(20).

Executive Order 13175 (Tribal Consultation)

This NPRM is largely technical and non-substantive. However, FHWA and BIA met with approximately 80 federally recognized Tribes at the National Transportation in Indian Country Conference (NTICC) in Big Sky, Montana, on September 18, 2019, and at the BIA Providers Conference in Anchorage, Alaska, on December 4,

2019, to advise and receive input on this proposed rule in the TTFBP regulations.

As an update to the NPRM to include the BIL revisions, several appropriate meetings and consultations with the Tribal Governments were held again in 2022 about the TTFBP and the NPRM. The following meetings with the Tribes were held:

1. Inter Tribal Council of Arizona Virtual Meeting, March 10, 2022.
2. BIA Alaska Provider's Conference Virtual Meeting, April 6, 2022.
3. Tribal Transportation Program Coordinating Committee (TTPCC) Meeting in Albuquerque, New Mexico, May 17, 2022.
4. Intertribal Transportation Association (ITA) Virtual Meeting, June 29, 2022.
5. United South and Eastern Tribes Virtual Meeting, July 19, 2022.
6. TTPCC Meeting in Lewiston, Idaho, August 9, 2022.
7. NTICC Meeting in Louisville, Kentucky, August 25, 2022.
8. BIA Alaska Provider's Conference in Anchorage, Alaska, November 30, 2022.
9. ITA Meeting in Las Vegas, Nevada, December 7, 2022.

FHWA and BIA will continue to discuss the proposed rule with the Tribal Governments and the TTPCC. The TTPCC is the committee established by Federal regulations at 25 CFR 170.135 to provide input and recommendations on the TTP to FHWA and BIA. It helps to develop the TTP policies and procedures, and also supplements Government-to-Government consultation by coordinating and obtaining input from Tribes, BIA, and FHWA. The TTPCC consists of 2 representatives from each of the 12 BIA regions, along with 2 non-voting Federal representatives (one each from BIA and FHWA).

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, the FHWA will hold four public information, education, and consultation meetings during the public comment period to explain the rule, answer questions, and take oral testimony. While a court reporter will document these meetings, attendees are encouraged to submit written public comments. Three meetings will be held in or near Indian country at the locations listed below and a fourth meeting will be held virtually. Additional information on the meetings may be found at *https://highways.dot.gov/federal-lands/programs-tribal/bridge.* FHWA will hold meetings on the following dates and locations:

1. April 4th, 2023, 2–3 p.m. EST, Virtual Listening Session by Webinar, *https://highways.dot.gov/federal-lands/programs-tribal/webinars;* Telephone: +1 551 285 1373; Meeting ID: 161 207 5615; Passcode: 042703.
2. April 20th, 2023, 9–11 a.m. MDT, Department of the Interior University, National Indian Programs Training Center, Albuquerque, NM.
3. May 17th, 2023, 9 –11 a.m. CST, Great Northern Jerome Hill Theater, St. Paul, MN.
4. May 18th, 2023, 2– 4 p.m. PDT, Northwest Region Transportation Symposium, Northern Quest Resort and Casino, Airway Heights, WA.

FHWA will fully consider Tribal views in the development of the final rule in this matter.

Executive Order 12898 (Environmental Justice)

E.O. 12898 requires that each Federal Agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. FHWA has determined that this proposed rule does not raise any environmental justice issues.

Regulation Identification Number

An RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 661

Bridges, Highways and roads, Indians.

Issued under authority delegated in 49 CFR 1.81, 1.84, and 1.85 on:

Andrew Rogers,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, FHWA proposes to revise part 661 of title 23, Code of Federal Regulations to read as follows:

PART 661—TRIBAL TRANSPORTATION FACILITY BRIDGE PROGRAM (TTFBP)

Sec.

Authority: 23 U.S.C. 120(j) and (k), 202, and 315; 49 CFR 1.81, 1.84, 1.85, 23 CFR 490 Subpart D.

§ 661.1 What is the purpose of this regulation?

The purpose of this regulation is to prescribe policies for project selection and fund allocation procedures for administering the TTFBP.

§ 661.3 Who must comply with this regulation?

Tribes and Tribal Consortiums must comply with this regulation in applying for TTFBP funds for planning, design, engineering, pre-construction, construction, and inspection of new or replacement TTF bridges classified as in poor condition, having low load capacity, or needing geometric improvements.

§ 661.5 What definitions apply to this regulation?

The following definitions apply to this regulation:

Approach roadway means the portion of the highway immediately adjacent to the bridge that affects the geometrics of the bridge, including the horizontal and vertical curves and grades required to connect the existing highway alignment to the new bridge alignment using accepted engineering practices and ensuring that all safety standards are met.

Construction engineering (CE) is the supervision, inspection, and other activities required to ensure the project construction meets the project's approved acceptance specifications, including but not limited to: additional survey staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.

National Bridge Inventory (NBI) means an FHWA database containing bridge information and inspection data for all highway bridges on public roads, on and off Federal-aid highways, including tribally owned and federally owned bridges, that are subject to the National Bridge Inspection Standards.

National Tribal Transportation Facility Inventory (NTTFI) means at a minimum, transportation facilities that are eligible for assistance under the TTP as defined in 25 CFR 170.5.

Operating Rating means the maximum permissible live load to which the structure may be subjected for the load configuration used in the load rating. Allowing unlimited numbers of vehicles to use the bridge at operating level may shorten the life of the bridge.

Plans, specifications and estimates (PS&E) means construction drawings, compilation of provisions, and construction project cost estimates for the performance of the prescribed scope of work.

Preliminary engineering (PE) means planning, survey, design, engineering, and preconstruction activities (including archaeological, environmental, and right-of-way activities) related to a specific bridge project.

Public road means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

Rehabilitation means major work required to restore the structural integrity of a bridge, as well as work necessary to correct major safety defects. FHWA Bridge Preservation Guide, Spring 2018 Edition.

Replacement means total replacement of an existing bridge with a new facility constructed in the same general traffic corridor. FHWA Bridge Preservation Guide, Spring 2018 Edition.

Tribal Transportation Facility (TTF) means a public highway, road, bridge, trail, transit system, or other approved facility that is located on or provides access to Tribal land and appears on the NTTFI.

TTF bridge means a structure located on the NTTFI, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

§ 661.7 What is the TTFBP?

The TTFBP, as established under 23 U.S.C. 202(d), is a nationwide priority program for improving TTF bridges classified as in poor condition, having low load capacity, or needing geometric improvements.

§ 661.9 What is the total funding available for the TTFBP?

The funding source and amount is specified by law, which is subject to change. Due to the complex nature of the funding for the TTFBP, please refer to the applicable statute and applicable FHWA guidance, which can be found on the FHWA's TTFBP website.

§ 661.11 When do TTFBP funds become available?

TTFBP funds are authorized at the start of each fiscal year but are subject to Office of Management and Budget apportionment before they become available to FHWA for further distribution.

§ 661.13 How long are these funds available?

TTFBP funds for each fiscal year are available for obligation for the year authorized plus 3 years (a total of 4 years).

§ 661.15 What are the eligible activities for TTFBP funds?

TTFBP funds can be used: (a) to carry out any planning, design, engineering, preconstruction, construction, and inspection of new or replacement TTF bridges;

(b) to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition; or

(c) to implement any countermeasure for TTF bridges classified as in poor condition, having a low load capacity, or needing geometric improvements, including multiple-pipe culverts; or

(d) to demolish the old bridge if a bridge is replaced under the TTFBP.

§ 661.17 What are the criteria for bridge eligibility?

(a) For bridge replacement or rehabilitation, TTF bridges are required to meet the following:

(1) have an opening of 20 feet or more;

(2) be classified as a Tribal transportation facility;

(3) be classified as in poor condition, have low load capacity, or need highway geometric improvements;

(4) be recorded in the NBI maintained by FHWA.

(b) For new bridge construction, TTF bridges are required to meet the following:

(1) be classified as a Tribal transportation facility;

(2) be a public bridge with opening of 20 feet or more, and recorded in the NBI after project completion.

§ 661.19 When is a bridge eligible for replacement?

To be eligible for replacement, a TTF bridge must be in poor condition, have low load capacity, or need highway geometric improvements.

§ 661.21 When is a bridge eligible for rehabilitation?

To be eligible for rehabilitation, a TTF bridge must be in poor or fair condition, have low load capacity, or need highway geometric improvements.

§ 661.23 How will a bridge project be programmed for funding once eligibility has been determined?

(a) All projects will be programmed for funding after a completed application package is received and

accepted by FHWA. At that time, the project will be acknowledged as either BIA and tribally owned, or non-BIA/non-tribally owned and placed in either a PE or a construction queue.

(b) All projects will be ranked and prioritized based on the following criteria:

(1) bridge condition with bridges in poor condition, having precedence over bridges in fair condition, and bridges in fair condition having precedence over bridges in good condition.

(2) low load capacity bridges based on Operating Rating;

(3) bridges on school bus routes;

(4) bypass detour length;

(5) annual average daily traffic; and

(6) annual average daily truck traffic.

(c) Queues will carryover from fiscal year to fiscal year as made necessary by the amount of annual funding made available.

(d) TTF bridges will be classified as good, fair, or poor based on the following criteria:

(1) *Good:* When the lowest rating of the 3 NBI items for a bridge (Items 58—Deck, 59—Superstructure, 60—Substructure) is 7, 8, or 9, the bridge will be classified as good. When the rating of the NBI item for a culvert (Item 62-Culvert) is 7, 8, or 9, the culvert will be classified as good.

(2) *Fair:* When the lowest rating of the three NBI items for a bridge is 5 or 6, the bridge will be classified as fair. When the rating of the NBI item for a culvert is 5 or 6, the culvert will be classified as fair.

(3) *Poor:* When the lowest rating of the three NBI items for a bridge is 4, 3, 2, 1, or 0, the bridge will be classified as poor. When the rating of the NBI item for a culvert is 4, 3, 2, 1, or 0, the culvert will be classified as poor. A poor condition bridge with a lower condition rating will have precedence over a poor condition bridge with a higher condition rating.

§ 661.25 What does a complete application package for PE consist of and how does the project receive funding?

(a) A complete application package for PE consists of the following:

(1) the certification checklist,

(2) Tribal Transportation Program (TTP) transportation improvement program (TIP),

(3) project scope of work,

(4) detailed cost for PE,

(5) NBI data, and

(6) an acknowledgment by the Tribe of the project specific funding requirements and that any excess funds will be returned to FHWA for further distribution.

(b) For non-BIA/non-tribally owned TTF bridges, the application package must also include a Tribal resolution supporting the project and identification of the required minimum 20 percent local funding match.

(c) Incomplete application packages will be disapproved and returned for revision and resubmission along with an explanation providing the reason for disapproval.

(d) The TTF bridge projects for PE will be placed in the queue and determined as eligible for funding after receipt by FHWA of a complete application package.

(e) Funding for the approved eligible projects on the queues will be made available to the Tribes, under a TTP Program agreement between FHWA and a Tribal Government or Consortium or the Secretary of the Interior upon availability of program funding at FHWA.

§ 661.27 What does a complete application package for construction consist of and how does the project receive funding?

(a) A complete application package for construction consists of the following:

(1) a copy of the approved PS&E,

(2) the certification checklist,

(3) NBI data,

(4) the TTP TIP,

(5) all environmental and archeological clearances and complete grants of public rights-of-way that must be acquired prior to submittal of the construction application package, and

(6) an acknowledgment by the Tribe of the project specific funding requirements and that any excess funds will be returned to FHWA for further distribution.

(b) For non-BIA/non-tribally owned TTF bridges, the application package must also include a copy of a letter from the bridge's owner approving the project and its PS&E, a Tribal resolution supporting the project, and identification of the required minimum 20 percent local funding match.

(c) Incomplete application packages will be disapproved and returned for revision and resubmission along with an explanation providing the reason for disapproval.

(d) The TTF bridge projects for construction will be placed in the queue and determined as eligible for funding after receipt by FHWA of a complete application package.

(e) Funding for the approved eligible projects in the queues will be made available to the Tribes, under a TTP Program Agreement between FHWA and a Tribal Government or Consortium, or the Secretary of the Interior upon availability of program funding at FHWA.

§ 661.29 How does ownership impact project selection?

Primary consideration will be given to eligible projects on BIA and tribally owned TTF bridges. A smaller percentage of available funds will be set aside for non-BIA/non-tribally owned TTF bridges, since States and counties have access to Federal-aid and other funding to design, replace, and rehabilitate their bridges.

The program policy will be to maximize the number of TTF bridges participating in the TTFBP in a given fiscal year regardless of ownership.

§ 661.31 Do TTF bridge projects have to be listed on an approved TTP TIP?

Yes. All TTF bridge projects must be listed on an approved FHWA TTP TIP. TTF bridge projects included in the TTP TIP that are not fiscally constrained may still be included as a list of projects dependent upon the availability of additional resources, also known as an ''illustrative list.''

§ 661.33 What percentage of TTFBP funding is available for PE and construction?

Up to 15 percent of the funding made available in any fiscal year will be eligible for PE. The remaining funding in any fiscal year will be available for construction.

§ 661.35 What percentage of TTFBP funding is available for use on BIA and tribally owned TTF bridges, and for non-BIA/non-tribally owned TTF bridges?

(a) Up to 80 percent of the available funding made available for PE and construction in any fiscal year will be eligible for use on BIA and tribally owned TTF bridges. The remaining funding in any fiscal year will be made available for PE and construction for use on non-BIA/non-tribally owned TTF bridges.

(b) At various times during the fiscal year, FHWA will review the projects awaiting funding and may shift funds between BIA and tribally owned, and non-BIA/non-tribally owned bridge projects to maximize the number of projects funded and the overall effectiveness of the program.

§ 661.37 What are the funding limitations on an individual TTF bridge project?

The following funding provisions apply in administration of the TTFBP:

(a) An eligible BIA/tribally owned TTF bridge is eligible for 100 percent TTFBP funding, with a $150,000 maximum limit for PE.

(b) An eligible non-BIA/non-tribally owned TTF bridge is eligible for up to 80 percent TTFBP funding, with a $150,000 maximum limit for PE and

$1,000,000 maximum limit for construction. The minimum 20 percent local match will need to be identified in the application package. TTP construction funds received by a Tribe may be used as the local match.

(c) Requests for additional funds above the referenced thresholds may be submitted along with proper justification to FHWA for consideration. The request will be considered on a case-by-case basis. There is no guarantee for the approval of the request for additional funds.

§ 661.39 How are project cost overruns funded?

(a) A request for additional TTFBP funds for cost overruns on a specific bridge project must be submitted to Bureau of Indian Affairs Division of Transportation (BIADOT) and FHWA for approval. The written submission must include a justification, an explanation as to why the overrun occurred, and the amount of additional funding required with supporting cost data. If approved by FHWA and BIADOT, the request will be placed at the top of the appropriate queue (with a contract modification request having a higher priority than a request for additional funds for a project award) and funding may be provided if available.

(b) Project cost overruns may also be funded out of the Tribe's regular TTP construction funding.

§ 661.41 After a bridge project has been completed (either PE or construction) what happens with the excess or surplus funding?

Since the funding is project specific, once a bridge design or construction project has been completed under this program, any excess or surplus funding is returned to FHWA for use on additional approved TTF bridge projects.

§ 661.43 Can other sources of funds be used to finance a queued project in advance of receipt of TTFBP funds?

Yes. A Tribe can use other sources of funds, including TTP construction funds, on a project that has been approved for funding and placed on the queue and then be reimbursed when TTFBP funds become available. If TTP construction funds are used for this purpose, the funds must be identified on an FHWA approved TTP TIP prior to their expenditure.

§ 661.45 What happens when TTFBP funds cannot be obligated by the end of the fiscal year?

The TTFBP funds from the Highway Trust Fund (HTF) provided to a project that cannot be obligated by the end of the fiscal year are to be returned to FHWA during August redistribution. The returned funds will be re-allocated to the BIA the following fiscal year after FHWA receives and accepts a formal request for the funds from BIA, which includes a justification for the amounts requested and the reason for the failure of the prior year obligation.

§ 661.47 Can routine bridge maintenance be performed with TTFBP funds?

No. Routine bridge maintenance repairs, *e.g.,* guard rail repair, repair of traffic control devices, striping, cleaning scuppers, deck sweeping, snow and debris removal, etc., are not eligible uses of TTFBP funding. The U.S. Department of the Interior's annual allocation for maintenance as well as TTP construction funds are eligible funding sources for routine bridge maintenance.

§ 661.49 Can TTFBP funds be spent on Interstate, State Highway, County, City, Township, and Toll Road TTF bridges?

Yes. Interstate, State Highway, County, City, Township, and Toll Road TTF bridges are eligible for funding as described in § 661.37(b).

§ 661.51 Can TTFBP funds be used for the approach roadway to a bridge?

Yes, costs associated with approach roadway work, as defined in § 661.5 are eligible. Long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures, when constructed beyond an attainable touchdown point, are not eligible uses of TTFBP funds.

§ 661.53 What standards should be used for bridge design?

(a) New and Replacement—New and replacement structure must meet the current geometric, construction and structural standards required for the types and volumes of projected traffic on the facility over its design life consistent with 25 CFR part 170, subpart D, Appendix B and 23 CFR part 625.

(b) Rehabilitation—Bridges to be rehabilitated, at a minimum, should conform to the standards of 23 CFR part 625, Design Standards for Federal-aid Highways, for the class of highway on which the bridge is a part.

§ 661.55 How are BIA and Tribally owned in-service TTF bridges inspected?

The BIA and tribally owned in-service TTF bridges are inspected in accordance with 25 CFR 170.513–170.514.

§ 661.57 What should be done with a BIA and Tribal bridge in poor condition if the Indian Tribe does not support the project?

The restrictions set forth in 25 CFR 170.114(a)(1) shall apply.

[FR Doc. 2023–06490 Filed 3–31–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Part 585

[Docket No. BOEM–2023–0005]

RIN 1010–AE04

Renewable Energy Modernization Rule

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of proposed rulemaking; extension of public comment period.

SUMMARY: We, the Bureau of Ocean Energy Management (BOEM), are extending the public comment period on our notice of proposed rulemaking (NPRM) titled ''Renewable Energy Modernization Rule'' by 30 days. Comments previously submitted need not be resubmitted and will be fully considered.

DATES: *Comment Period.* The comment period for the Renewable Energy Modernization Rule NPRM, which was published on January 30, 2023 (88 FR 5968), is extended by 30 days. Comments submitted online at *https://regulations.gov* must be received by 11:59 p.m. Eastern Standard Time on May 1, 2023. Hardcopy comments must be received or postmarked on or before May 1, 2023.

ADDRESSES:

Docket. The publicly available documents relevant to this action are available for public inspection electronically at *https://regulations.gov* in Docket No. BOEM–2023–0005.

Submitting Comments. You may send comments regarding the substance of this proposed rule, identified by Docket No. BOEM–2023–0005 or regulation identifier number (RIN) 1010–AE04, using any of the following methods:

- *Federal e-rulemaking portal: http://regulations.gov.* Search for and submit comments on Docket No. BOEM–2023–0005.
- *U.S. Postal Service or other mail delivery service:* Address comments to the Office of Regulations, Bureau of Ocean Energy Management, Department of the Interior, Attention: Kelley Spence, 45600 Woodland Road, Mailstop: DIR–BOEM, Sterling, VA 20166.

Instructions: All comments submitted regarding this proposed rule should reference Docket No. BOEM–2023–0005 or RIN 1010–AE04. All comments received by BOEM will be reviewed and may be posted to *https://www.regulations.gov,* including any personal information provided with the submission. For further instructions on protecting personally identifiable information, see ''Public Availability of Comments'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kelley Spence, Office of Regulations, BOEM, at telephone number 984–298–7345 or email address *Kelley.Spence@boem.gov;* or Karen Thundiyil, Chief, Office of Regulations, BOEM, at telephone number 202–742–0970 or email address *Karen.Thundiyil@boem.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: On January 30, 2023 (88 FR 5968), we published the Renewable Energy Modernization Rule NPRM which contained reforms identified by the Department of the Interior and recommended by industry, including proposals for incremental funding of decommissioning accounts; more flexible geophysical and geotechnical survey submission requirements; streamlined approval of meteorological (met) buoys; revised project verification procedures; reform of BOEM's renewable energy auction process; and greater clarity regarding safety requirements. With this notice, we are extending the public comment period on the NPRM from March 31, 2023, to May 1, 2023.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section of this notice. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2023–06924 Filed 3–30–23; 4:15 pm]

BILLING CODE 4340–98–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0210]

RIN 1625–AA00

Safety Zone; Allegheny River Mile Marker 0.25–0.8, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for the Allegheny River at Mile Marker 0.25–0.8. This action is necessary to provide for the safety of life on these navigable waters during a drone show display. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Pittsburgh or a designated representative. We invite your comments on this proposed rulemaking.

DATES: This proposed regulation would be effective from 9:30 p.m. through 11 p.m. on May 19, 2023. Comments and related material must be received by the Coast Guard on or before April 24, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0210 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 LTJG Eyobe Mills, Marine Safety Unit Pittsburgh, U.S. Coast Guard; at telephone 412–221–0807 ext. 225, email *Eyobe.D.Mills@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 March 2, 2023, the Pittsburgh Pirates notified the Coast Guard that it will be conducting a drone show display from 9:30 p.m. through 11 p.m. on May 19, 2023. The drone show will be conducted approximately 100 feet toward the Allegheny River. Hazards from the drone show displays include dangerous projectiles and falling debris. The Captain of the Port Pittsburgh (COTP) has determined that potential hazards associated with the drone show safety concern for those inside the safety zone.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the safety zone before, during, and after the scheduled 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 9:30 p.m. to 11 p.m. on May 19, 2023. The safety zone would cover all navigable waters on the Allegheny River from Miles 0.25 to Mile 0.8. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10 p.m. through 11 p.m. drone show display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. 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 size, location, and duration of the temporary safety zone. This safety zone impacts 0.55 miles stretch of the Allegheny River for a short amount of time of 1.5 hours on one evening. Vessel traffic will be informed about the safety zone through local notice to mariners. Moreover, the Coast Guard will issue Local Notice to Marines, Broadcast Notice to Mariner via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission from the COTP to transit the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 temporary 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 temporary safety zone lasting 1.5 hours that would prohibit entry within Allegheny River from mile 0.25 to mile 0.8. Normally such actions are categorically excluded from further review under paragraph L60a 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–2023–0210 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.T08–0210 to read as follows:

§ 165.T08–0210 Safety Zone; Allegheny River, Miles 0.25–0.8, Pittsburgh, PA.

(a) *Location.* The following area is a temporary safety zone: all navigable waters of the Allegheny River from Mile 0.25- Mile 0.8.

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

(c) *Regulations.*

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by phone at 412–670–4288. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 9:30 p.m. through 11 p.m. on May 19, 2023.

Eric J. Velez,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2023–06758 Filed 3–31–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 46

RIN 2900–AR83

Reporting to the National Practitioner Data Bank

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to remove its regulations governing the National Practitioner Data Bank (NPDB). Instead, VA will rely on Department of Health and Human Services (HHS) regulations that govern the NPDB, a Memorandum of Understanding (MOU) between VA and HHS, and VA policy. This change will allow VA to more easily and effectively comply with HHS rules governing the NPDB.

DATES: Comments must be received on or before June 2, 2023.

ADDRESSES: Comments may be submitted through *www.Regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Marianne Chick, MHA, Director, VHA Medical Staff Affairs (10E1F), Office of Quality Management, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, Phone (919) 474–3937. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background on the National Practitioner Data Bank

Health Care Quality Improvement Act of 1986 and Implementing Regulations

The National Practitioner Data Bank (NPDB) was established by the Health Care Quality Improvement Act of 1986 (HCQIA), as amended (42 United States Code (U.S.C.) 11101 *et seq.*). The NPDB was developed by the U.S. Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA), and Bureau of Health Professions (BHPr). The NPDB is a web-based repository of reports containing information on medical malpractice payments and certain adverse actions taken against health care practitioners, providers, and suppliers. It is a workforce tool that assists in promoting quality health care and deterring fraud and abuse within health care delivery systems. It prevents health care practitioners, providers, and suppliers from moving from one State to another without disclosure or discovery of previous damaging actions or incompetent performance.

The HCQIA authorizes the NPDB to collect reports of adverse licensure actions against physicians, dentists, and other licensed independent practitioners (including revocations, suspensions, reprimands, censures, probations, and surrenders); adverse clinical privileges actions; adverse professional society membership actions against physicians and dentists; Drug Enforcement Administration (DEA) certification actions; Medicare/Medicaid exclusions; and medical malpractice payments (including settlement of medical malpractice claims) made for the benefit of any health care practitioner. Information under the HCQIA is reported by medical malpractice payers, State medical and dental boards, professional societies with formal peer review, and hospitals and other health care entities (such as health maintenance organizations). The NPDB reports are confidential and therefore, not accessible by the public. Rather, health care entities that have formal peer review processes and provide health care services, State medical or dental boards, and other health care practitioner State boards have access to this data system.

Additionally, individual practitioners may conduct a self-query.

On October 17, 1989, HHS finalized and published the NPDB regulations at 45 CFR part 60. See 54 FR 42722. Those regulations set forth the criteria and procedures for information to be collected in and released from the NPDB, in accordance with the requirements of HCQIA. The NPDB began collecting reports on September 1,1990. See 55 FR 31239 (August 1, 1990).

VA–HHS Memorandum of Understanding (MOU) and VA Regulations

VA and HHS entered into a MOU as required by 42 U.S.C. 11152(b). This MOU was necessary because HCQIA Title IV did not include federal agencies in its reporting and querying requirements. Moreover, as a Federal agency, VA is unable to comply with certain provisions of the HHS regulations regarding reporting procedures and requirements for reporting medical malpractice payments and clinical privileges because certain provisions are governed by the MOU as well as by VA specific policies and procedures.

For instance, consistent with the Federal Tort Claims Act (28 U.S.C. 1346(b), 2671–2680), Federal District Courts have exclusive jurisdiction over civil actions on claims against the United States, for money damages, due to personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of their office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. This includes medical malpractice claims filed against a VA medical facility or a VA health care provider. The beneficiary cannot sue the facility or the provider directly but must file the claim against the United States Government. The Federal government assumes responsibility for costs related to a claim resulting from the performance of a medical, surgical, dental, or related function.

Therefore, the MOU addresses reporting payments made by VA for medical malpractice claims, including settlements, made on behalf of a VA health care provider. The MOU includes an agreement that VA will identify the licensed practitioner for whose benefit the payment was made. The MOU also addresses VA's obligation to report: (1) certain actions to State licensing boards; (2) adverse clinical privileging actions against all privileged providers; and (3) actions under Section 1128E of the Social Security Act, which is described in more detail below.

On October 28, 1991, VA published regulations at 38 CFR part 46 to formalize and interpret the provisions of the MOU. 56 FR 55462. On May 23, 2002, VA subsequently amended this regulation. 67 FR 19678. This amendment reflected changes in VA's internal processes.

Section 1921 of the Social Security Act and Implementing Regulations

Section 1921 of the Social Security Act (42 U.S.C. 1396r–2), as amended by section 5(b) of the Medicare and Medicaid Patient and Program Protection Act of 1987, and the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, expanded the State requirements under the NPDB. Each State is required to adopt a system of reporting to the Secretary of HHS for the following actions: (1) adverse licensure or certification actions taken against health care practitioners, health care entities, providers, and suppliers; and (2) certain final adverse actions taken by State law and fraud enforcement agencies against health care practitioners, providers, and suppliers. On January 28, 2010, HHS updated its NPDB regulations to comply with Section 1921 of the Social Security Act. See 75 FR 4656. The NPDB began collecting and disclosing section 1921 information on March 1, 2010. 75 FR 4656 (January 28, 2010).

In 1996, the Health Insurance Portability and Accountability Act of 1996, (42 U.S.C. 1320a–7e) added section 1128E to the Social Security Act, which directed HHS to establish and maintain a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken by Federal agencies and health plans against health care practitioners, providers, or suppliers. This data was previously collected by the Healthcare Integrity and Protection Data Bank (HIPDB). The HIPDB began collecting reports in November 1999, but as of May 6, 2013, this collection is now included in the NPDB.[1]

[1] Section 6403 of the Patient Protection and Affordable Care Act of 2010, Public Law 111–148, amended sections 1921 and 1128E to: eliminate duplication between the HIPDB and the NPDB; require the Secretary of HHS to establish a transition period of transferring data collected in the HIPDB to the NPDB; and cease HIPDB operations. Final regulations implementing section 6403 were issued on April 5, 2013 (78 FR 20473) and May 6, 2013 (78 FR 25858).

Revisions to 45 CFR 60.30 in 2015

On April 5, 2015, HHS amended 45 CFR 60.3 to include VA as a Federal government agency in NPDB reporting requirements. See 78 FR 20473, 20485. We note that the recognition of VA as a Federal government agency does not preclude the need for an MOU between VA and HHS to address circumstances that are not required by the HHS regulations as mentioned above.

II. Proposed Removal of 38 CFR Part 46

VA has determined, in consultation with HHS, that its NPDB regulations at 38 CFR part 46 should be removed, and that VA should instead rely on HHS regulations at 45 CFR part 60 for NPDB reporting, supplemented with a MOU with HHS and VA policy to address NPDB compliance on issues involving the delivery of health care by a federal agency. VA has determined that maintaining separate NPDB rulemaking is problematic. VA's regulations are not comprehensive and therefore, it is not always clear to VA health care professionals, which requirements are applicable.

Since 38 CFR part 46 was drafted to formalize the MOU with HHS, it did not encompass all of VA's required and permissive reporting requirements. For example, additional amendments have been made to the HHS NPDB regulations to include additional reporting requirements that are applicable to VA such as 45 CFR 60.15 and 60.16 78. FR 20473 (April 5, 2013). These amendments require the reporting of exclusions from participation in Federal or State health care programs and other adjudicated actions or decisions. Although required, VA's regulations at 38 CFR part 46 do not explicitly address this requirement. Also, part 46 definitions at 38 CFR 46.1 are not wholly consistent with those found in 45 CFR 60.3. Further, HHS NPDB reporting requirements allow for voluntarily reporting of adverse actions taken against clinical privileges by other health care practitioners. 45 CFR 60.12(a)(2). However, VA did not include this voluntary reporting requirement in its regulation which has precluded it from reporting actions by other health care practitioners. These inconsistencies create confusion and place self-imposed limitations on VA.

In addition, when HHS amends 45 CFR part 60, VA is not able to amend 38 CFR part 46 until after HHS publishes a final rule. VA's NPDB regulation could be inconsistent with HHS's for a significant interim period. This problem is avoided if VA relies on 45 CFR part 60 as guidance on NPDB

reporting requirements. In addition, 38 CFR part 46 address internal agency processes related to VA medical malpractice review panels that may be subject to change. Therefore, we believe that it should be memorialized in VA policy rather than regulation.

We note that VA is the only Federal agency providing health care to eligible beneficiaries that published regulations on NPDB compliance. The Department of Defense has not published regulations on NPDB, but instead cites to 45 CFR part 60 as authority and issued agency policy to implement the NPDB reporting requirements for the component armed services. Likewise, the U.S. Public Health Service and Indian Health Service also issued policies implementing the NPDB reporting requirements.

The proposed removal of 38 CFR part 46 will not obviate VA's reporting requirements nor will it alter how malpractice is handled for VA practitioners. Rather we believe relying on 45 CFR part 60, supplemented by an MOU with HHS and VA policy, will reduce confusion and allow VA to adhere to all mandatory and permissive reporting requirements by eliminating any inconsistency between HHS and VA regulations.

Based on the foregoing rationale, VA proposes removing part 46 and marking it as reserved for future use and relying on HHS regulations at 45 CFR part 60 for NPDB reporting requirements, supplemented by an MOU between HHS and VA policy.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Oder 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This proposed rule would only affect individuals who are VA employees or independent contractors acting on behalf of VA and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

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

Paperwork Reduction Act

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

Assistance Listing

The Assistance listing numbers and titles for the programs affected by this document are: 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; 64.039 CHAMPVA; 64.040 VHA Inpatient Medicine; 64.041 VHA Outpatient Specialty Care; 64.042 VHA Inpatient Surgery; 64.043 VHA Mental Health Residential; 64.044 VHA Home Care; 64.045 VHA Outpatient Ancillary Services; 64.046 VHA Inpatient Psychiatry; 64.047 VHA Primary Care; 64.048 VHA Mental Health Clinics; 64.049 VHA Community Living Center; and 64.050 VHA Diagnostic Care.

List of Subjects in 38 CFR Part 46

Health professions, Reporting and recordkeeping requirements.

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.

Consuela Benjamin,

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

For the reasons set forth in the preamble, we propose to amend 38 CFR part 46 as follows:

PART 46—[Removed and Reserved]

■ 1. Remove and reserve part 46, consisting of §§ 46.1 through 46.8.

[FR Doc. 2023–06811 Filed 3–31–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1600 and 6100

[LLHQ230000.23X.L117000000.PN0000]

RIN 1004–AE92

Conservation and Landscape Health

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes new regulations that, pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and other relevant authorities, would advance the BLM's mission to manage the public lands for multiple use and sustained yield by prioritizing the health and resilience of ecosystems across those lands. To ensure that health and resilience, the proposed rule provides that the BLM will protect intact landscapes, restore degraded habitat, and make wise management decisions based on science and data. To support these activities, the proposed rule would apply land health standards to all BLM-managed public lands and uses, clarify that conservation is a ''use'' within FLPMA's multiple-use framework, and revise existing regulations to better meet FLPMA's requirement that the BLM prioritize designating and protecting Areas of Critical Environmental Concern (ACECs). The proposed rule would add

to provide an overarching framework for multiple BLM programs to promote ecosystem resilience on public lands.

DATES: Please submit comments on this proposed rule on or before June 20, 2023 or 15 days after the last public meeting. The BLM is not obligated to consider comments made after this date in making its decision on the final rule.

ADDRESSES: Mail, personal, or messenger delivery: U.S. Department of the Interior, Director (630), Bureau of Land Management, 1849 C St. NW, Room 5646, Washington, DC 20240, Attention: 1004–AE92.

Federal eRulemaking Portal: https://www.regulations.gov. In the Searchbox, enter ''1004–AE–92'' and click the ''Search'' button. Follow the instructions at this website.

For Comments on Information-Collection Requirements: Written comments and recommendations for the information-collection requirements should be sent within 30 days of publication of this document 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. You may also provide a copy of your comments to the BLM's Information Collection Clearance Officer via the above address with ''Attention PRA Office,'' or via email to *BLM_HQ_PRA_Comments@blm.gov.* Please reference OMB Control Number 1004–0NEW and RIN 1004–AE92 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Stephanie Miller, Deputy Division Chief for Wildlife Conservation, at 202–317–0086, for information relating to the BLM's national wildlife program or the substance of this proposed rule. For information on procedural matters or the rulemaking process, you may contact Chandra Little, Regulatory Analyst for the Office of Regulatory Affairs, at 202–912–7403. Individuals in the United States who are deaf, deafblind, or hard of hearing, or who have a speech disability, may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Under FLPMA, the principles of multiple use and sustained yield govern the BLM's stewardship of public lands, unless otherwise provided by law. The BLM's ability to manage for multiple use and sustained yield of public lands depends on the resilience of ecosystems across those lands—that is, the health of the ecosystems and the ability of the lands to deliver associated services, such as clean air and water, food and fiber, renewable energy, and wildlife habitat. Ensuring resilient ecosystems has become imperative, as public lands are increasingly degraded and fragmented due to adverse impacts from climate change and a significant increase in authorized use. To ensure the resilience of renewable resources on public lands for future generations, the proposed rule promotes ''conservation'' and defines that term to include both protection and restoration activities. It also advances tools and processes to enable wise management decisions based on science and data.

The proposed rule provides a framework to protect intact landscapes, restore degraded habitat, and ensure wise decisionmaking in planning, permitting, and programs, by identifying best practices to manage lands and waters to achieve desired conditions. To do so, the proposed rule applies the fundamentals of land health and related standards and guidelines to all BLM-managed public lands and uses; current BLM policy limits their application to grazing authorizations. In implementing the fundamentals of land health, the proposed rule codifies the need across BLM programs to use high-quality information to prepare land health assessments and evaluations and make determinations about land health condition. The proposed rule requires meaningful consultation during decisionmaking processes with Tribes and Alaska Native Corporations on issues that affect their interests, including the use of Indigenous Knowledge.

To support efforts to protect and restore public lands, the proposed rule clarifies that conservation is a use on par with other uses of the public lands under FLPMA's multiple-use and sustained-yield framework. Consistent with how the BLM promotes and administers other uses, the proposed rule establishes a durable mechanism, conservation leases, to promote both protection and restoration on the public lands, while providing opportunities for engaging the public in the management of public lands for this purpose. The proposed rule does not prioritize conservation above other uses; it puts conservation on an equal footing with other uses, consistent with the plain language of FLPMA. Finally, the proposed rule would amend the existing ACEC regulations to better ensure that the BLM is meeting FLPMA's command to give priority to the designation and protection of ACECs. The proposed regulatory changes would emphasize ACECs as the principal designation for protecting important natural, cultural, and scenic resources, and establish a more comprehensive framework for the BLM to identify, evaluate, and consider special management attention for ACECs in land use planning. The proposed rule emphasizes the role of ACECs in contributing to ecosystem resilience by providing for ACEC designation to protect landscape intactness and habitat connectivity.

II. Public Comment Procedures

If you wish to comment on this proposed rule, you may submit your comments to the BLM by mail, personal or messenger delivery during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays, or through the *https://www.regulations.gov* website (see the **ADDRESSES** section).

Please make your comments on the proposed rule as specific as possible, limit them to issues pertinent to the proposed rule, explain the reason for any changes you recommend, and include any supporting documentation. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed previously (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under the **ADDRESSES** section. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. Although 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.

As explained below, this proposed rule includes revisions to information-collection requirements that must be approved by the Office of Management

and Budget (OMB). If you wish to comment on the revised information-collection requirements in this proposed rule, please note that such comments must be sent directly to the OMB in the manner described in the **DATES** and **ADDRESSES** sections above. Please note that due to COVID–19, electronic submission of comments is recommended.

III. Background

A. The Need for Resilient Public Lands

The BLM manages more than 245 million acres of public lands, roughly one-tenth of the country. The BLM's stewardship of these lands and resources is guided by FLPMA, unless otherwise provided by law. FLPMA provides the BLM with ample authority and direction to conserve ecosystems and other resources and values across the public lands. Section 102(a)(8) of FLPMA states the policy of the United States that ''the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use'' (43 U.S.C. 1701(a)(8)). Each of these services and values that FLPMA authorizes the BLM to safeguard emanates from functioning and productive native ecosystems that supply food, water, habitat, and other ecological necessities.

Furthermore, FLPMA requires that unless ''public land has been dedicated to specific uses according to any other provisions of law,'' the Secretary, through the BLM, must ''manage the public lands under principles of multiple use and sustained yield'' (43 U.S.C. 1732(a)). The term ''sustained yield'' means ''the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use'' (43 U.S.C. 1702(h)). The BLM recognizes this need for ecosystems to continue to provide services and values when declaring, in its mission statement, its goal ''to sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations.'' (blm.gov (emphasis added); see also 43 U.S.C. 1702(c).) Without ensuring that native ecosystems are functioning and resilient, the agency risks failing on this commitment to the future.

The term ''multiple use'' means, among other things, ''the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people''; ''the use of some land for less than all of the resources''; ''a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values''; ''harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.'' (43 U.S.C. 1702(c)). FLPMA's declaration of policy and definitions of ''multiple use'' and ''sustained yield'' reveal that conservation is a use on par with other uses under FLPMA. The procedural, action-forcing mechanisms in this proposed rule grow out of that understanding of multiple use and sustained yield.

Public lands are increasingly degraded and fragmented. Increased disturbances such as invasive species, drought, and wildfire, and increased habitat fragmentation are all impacting the health and resilience of public lands and making it more challenging to support multiple use and the sustained yield of renewable resources. Climate change is creating new risks and exacerbating existing vulnerabilities.[1]

To address these threats, it is imperative for the BLM to steward public lands to maintain functioning and productive ecosystems and work to ensure their resilience, that is, to ensure that ecosystems and their components can absorb, or recover from, the effects of disturbances and environmental change. This proposed rule would pursue that goal through protection, restoration, or improvement of essential ecological structures and functions. The resilience of public lands will determine the BLM's ability to effectively manage for multiple use and sustained yield over the long term. The proposed rule, in acknowledging this reality, identifies and requires practices to ensure that the BLM manages the public lands to allow multiple uses while retaining and building resilience to achieve sustained yield of renewable resources. This proposed rule is designed to ensure that the nation's public lands continue to provide minerals, energy, forage, timber, and recreational opportunities, as well as habitat, protected water supplies, and landscapes that resist and recover from drought, wildfire, and other disturbances. As intact landscapes play a central role in maintaining the resilience of an ecosystem, the proposed rule emphasizes protecting those public lands with remaining intact, native landscapes and restoring others.

B. Management Decisions To Build Resilient Public Lands

The proposed rule recognizes that the BLM has three primary ways to manage for resilient public lands: (1) protection of intact, native habitats; (2) restoration of degraded habitats; and (3) informed decisionmaking, primarily in plans, programs, and permits. The BLM protects intact landscapes using various tools, including designation of ACECs. The proposed rule uses the term ''conservation'' in a broader sense, however, to encompass both protection and restoration actions. Thus, it is not limited to lands allocated to preservation, but applies to all BLM-managed public lands and programs. While BLM policy and guidance outlined in Manual Sections 6500, 6840, 5000, and 1740 encourage programs to implement conservation and ecosystem management, the BLM does not currently have regulations that promote conservation efforts for all resources. This proposed rule is intended to address this gap in the Bureau's regulations. The proposed rule would require the BLM to plan for and consider conservation as a use on par with other uses under FLPMA's multiple use framework and identify the practices that ensure conservation actions are effective in building resilient public lands. Conservation, in this proposed rule, includes management of renewable resources consistent with the fundamentals of land health (described below), designed to reach desired future conditions through protection, restoration, and other types of planning, permitting, and program decisionmaking.

The proposed rule addresses protection of intact, native landscapes. One of the principal tools the BLM has

[1] See generally Carr, et al., A Multiscale Index of Landscape Intactness for the Western United States (2016), *https://www.sciencebase.gov/catalog/item/57d8779de4b090824ff9acfb;* Doherty el al., A Sagebrush Conservation Design to Proactively Restore America's Sagebrush Biome (Open-file report 2022–1081 USGS), *https://pubs.er.usgs.gov/publication/ofr20221081.*

available to manage public lands for that type of conservation use is the designation of ACECs. ACECs are areas where special management attention is needed to protect important historic, cultural, and scenic values, fish, or wildlife resources, or other natural systems or processes, or to protect human life and safety from natural hazards. The proposed rule clarifies and expands existing ACEC regulations to better ensure that the BLM is meeting FLPMA's command to give priority to the designation and protection of these important areas. These proposed regulatory changes support and enhance BLM's protection of intact landscapes through ACEC designation and better leverage this statutory tool for ecosystem resilience.

The proposed rule also addresses restoration of degraded landscapes. It offers a new tool, conservation leases, that would allow the public to directly support durable protection and restoration efforts to build and maintain the resilience of public lands. These leases would be available to entities seeking to restore public lands or provide mitigation for a particular action. They would not override valid existing rights or preclude other, subsequent authorizations so long as those subsequent authorizations are compatible with the conservation use. The proposed rule would establish the process for applying for and granting conservation leases, terminating or suspending them, determining noncompliance, and setting bonding obligations. Conservation leases and ACECs could also provide opportunities for co-stewardship with federally recognized Tribes and additional protections for cultural resources.

Conservation leases would be issued for a term consistent with the time required to achieve their objective. Most conservation leases would be issued for a maximum of 10 years, which term would be extended if necessary to serve the purposes for which the lease was first issued. Any conservation lease issued for the purposes of providing compensatory mitigation would require a term commensurate with the impact it is offsetting.

Further, to ensure the BLM does not limit its ability to build resilient public lands when authorizing use, the proposed rule includes provisions related to mitigation (*i.e.,* actions to avoid, minimize, and compensate for certain residual impacts). The proposed rule reaffirms the BLM's adherence to the mitigation hierarchy for all resources. The proposed rule also requires mitigation, to the maximum extent possible, to address adverse impacts to important, scarce, or sensitive resources, and it sets rules for approving third-party mitigation fund holders. There are already several existing approved third-party mitigation fund holders that may receive and administer funds for the mitigation of impacts to natural resources, as well as other funds arising from legal, regulatory, or administrative proceedings that are, subject to the condition that the amounts be received or administered for purposes that further conservation and restoration. The new provisions would ensure that the public enjoys the benefits of mitigation measures and support those seeking permission to use public lands by enhancing mitigation options.

C. Science for Management Decisions To Build Resilient Public Lands

To support conservation actions and decision making, the proposed rule applies the fundamentals of land health (taken verbatim from the existing fundamentals of rangeland health at 43 CFR 4180.1 (2005)) and related standards and guidelines to all renewable-resource management, instead of just to public-lands grazing. Broadening the applicability of the fundamentals of land health would ensure BLM programs will more formally and consistently consider the condition of public lands during decisionmaking processes. Renewable resources on public lands should meet the fundamentals of land health overall at the watershed scale. The proposed rule recognizes, however, that in determining which actions are required to achieve the land health standards and guidelines, the BLM must take into account current land uses, such as mining, energy production and transmission, and transportation, as well as other applicable law. The BLM welcomes comments on how applying the fundamentals of land health beyond lands allocated to grazing will interact with BLM's management of non-renewable resources.

To implement the fundamentals of land health, the proposed rule directs BLM programs to use high-quality information to prepare land health assessments and evaluations and make determinations about the causes of failing to achieve land health. Such information is derived largely from assessing, inventorying, and monitoring renewable resources, as well as Indigenous Knowledge. The resulting data provides the means for detecting trends in land health and can be used to make management decisions, implement adaptive strategies, and support conservation efforts to build ecosystem resilience.

D. Inventory, Evaluation, Designation, and Management of ACECs

To implement FLPMA's direction to ''give priority to the designation and protection of areas of critical environmental concern,'' the BLM follows regulatory requirements found at 43 CFR 1610.7–2 and policy instruction found in Manual Section 1613. The BLM currently inventories, evaluates, and designates ACECs requiring special management direction as part of the land use planning process. The BLM's land use planning process guides BLM resource management decisions in a manner that allows the BLM to respond to issues and to consider trade-offs among environmental, social, and economic values. Further, the planning process requires coordination, cooperation, and consultation, and provides other opportunities for public involvement that can foster relationships, build trust, and result in durable decisionmaking.

In the initial stages of the planning process, the BLM, through inventories and external nominations, identifies any potential new ACECs to evaluate for relevance, importance, and the need for special management attention. The BLM determines whether such special management attention is needed by evaluating alternatives in the land use plan and considering additional issues related to the management of the proposed ACEC, including public comments received during the planning process. Special management measures may also provide an opportunity for Tribal co-stewardship. In Approved Resource Management Plans, the BLM identifies all designated ACECs and provides the management direction necessary to protect the relevant and important values for which the ACECs were designated.

In more than 40 years of applying the procedures found at 43 CFR 1610.7–2 and in Manual Section 1613, the BLM has identified several needed revisions. Additionally, the BLM's procedures for considering and designating potential ACECs are currently partially described in regulation and partially described in agency policy. The proposed rule would codify these procedures in regulation, providing more cohesive direction and consistency to the agency's ACEC designation process. The proposed rule maintains the general process for inventorying, evaluating, designating, and managing ACECs, described here, but makes specific changes to clarify and improve that process.

As part of this rulemaking, the BLM proposes establishing procedures that require consideration of ecosystem resilience, landscape-level needs, and rapidly changing landscape conditions in designating and managing ACECs. The BLM may also revise the ACEC manual and develop an ACEC handbook to integrate the existing rule as well as the changes proposed in this rulemaking, if finalized, into policy. The BLM would thus provide additional guidance for how to incorporate ACECs into resource management decisions in a way that considers trade-offs among environmental, social, and economic values during land use planning.

E. Statutory Authority

The Federal Land Policy and Management Act of 1976, as amended, is the BLM's organic act; it establishes the agency's mission to manage public lands. FLPMA further establishes the policy of the United States that public lands be managed in a manner that recognizes the nation's need for natural resources from those lands, provides for outdoor recreation and other human uses, maintains habitat for fish and wildlife, preserves certain public lands in their natural condition, and protects the quality of the scientific, scenic, historical, ecological, environmental, water-resource, and archaeological values of the nation's lands (43 U.S.C. 1701).

FLPMA governs the BLM's management of the public lands and directs the BLM to manage such lands ''under principles of multiple use and sustained yield'' (except for lands where another law directs otherwise) (43 U.S.C. 1732(a)). Multiple use is defined as the management of the public lands and their various resource values so that they are utilized to the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long- term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output. (43 U.S.C. 1702(c)). FLPMA also authorizes the Secretary to promulgate implementing regulations necessary ''to carry out the purposes'' of the Act (43 U.S.C. 1740). The rule proposed here under that authority would (1) define and regulate conservation use on the public lands in service of FLPMA's multiple-use and sustained-yield mandates; (2) provide for third party authorizations to use the public lands for conservation under FLPMA section 302(b) (43 U.S.C. 1732(b)); and (3) revise the existing regulations implementing FLPMA's direction in sections 201(a) and 202(c)(3) (43 U.S.C. 1711(a), 1712(c)(3)) that the BLM shall give priority to ACECs. (See also 43 U.S.C. 1701(a)(11) (''it is the policy of the United States that—regulations and plans for the protection of public land areas of critical environmental concern be promptly developed.'')

Section 2002 of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202) legislatively established the National Landscape Conservation System (NLCS), to include public lands carrying certain executive or congressional designations and set parameters for the management of lands within the system. NLCS lands are subject to regulatory requirements like other BLM-managed public lands. The regulations proposed here define the term ''conservation'' in a way that is distinct from the use of the term in section 2002. Here, ''conservation'' is a shorthand for the direction in FLPMA's multiple-use and sustained-yield mandates to manage public lands for resilience and future productivity. ''Conservation,'' as the term is defined in these regulations, is part of the BLM's mission not only on lands within the NLCS, but on all lands subject to FLPMA's multiple-use and sustained-yield mandates. At the same time, these regulations also would support the BLM's execution of the statutory direction in section 2002 to ''manage the [NLCS] in a manner that protects the values for which the components of the system were designated'' (16 U.S.C. 7202(c)(2)).

F. Related Executive and Secretarial Direction

The proposed rule responds to, and advances directives set forth in several Executive and Secretary's Orders and related policies and strategies. These directives call on the Department of the Interior (DOI), and the Federal Government more generally, to use landscape-scale, science-based, collaborative approaches to natural resource management. Recent Presidential and Secretarial directives also emphasize the importance of responding to, and mitigating the effects of, climate change. Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis highlights the need to use science to reduce greenhouse gas emissions, bolster resilience to the impacts of climate change, and prioritize environmental justice. Executive Order 14008: Tackling the Climate Crisis at Home and Abroad calls for quick action to build resilience against the impacts of climate change, bolster adaptation, and increase resilience across all operations, programs, assets, and mission responsibilities with a focus on the most pressing climate vulnerabilities. Section 211 of Executive Order 14008, calls on Federal agencies to develop a Climate Action Plan. In 2021, the DOI completed that plan, which creates policy to confront and adapt to the challenges that climate change poses to the Department's mission, programs, operations, and personnel.

The Department will use the best available science to take concrete steps to adapt to and mitigate climate-change impacts on its resources. Secretary's Order 3399: Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process establishes a Departmental Climate Task Force to prioritize the use of the best available science to evaluate the climate change impacts of Federal land uses. Multiple directives related to climate change also emphasize the importance of collaboration, science, and adaptive management as well as the need for landscape-scale approaches to resource management. The Departmental Manual chapter on climate-change policy (523 DM 1), issued on December 20, 2012, directs DOI bureaus and agencies to ''promote landscape-scale, ecosystem-based management approaches to enhance the resilience and sustainability of linked human and natural systems.'' The Department of the Interior Climate Action Plan and Climate Adaptation and Resilience Policy, issued on October 7, 2021, provides further guidance.

Secretary's Order 3289: Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources, issued on September 14, 2009, and amended on February 22, 2010, directs DOI bureaus and agencies to work together,

with other Federal, State, Tribal, and local governments, and also with private landowners, to develop landscape-level strategies for understanding and responding to climate change impacts.

Secretary's Order 3403: Joint Secretary's Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters, issued November 15, 2021, reiterates the Departments' commitment to the United States' trust and treaty obligations as an integral part of managing Federal lands. The Order emphasizes that ''Tribal consultation and collaboration must be implemented as components of, or in addition to, Federal land management priorities and direction for recreation, range, timber, energy production, and other uses, and conservation of wilderness, refuges, watersheds, wildlife habitat, and other values.'' The Order also notes the benefit of incorporating Tribal expertise and Indigenous Knowledge into Federal land and resources management.

Executive Order 14072, Strengthening the Nation's Forests, Communities, and Local Economies, recognizes that healthy forests are ''critical to the health, prosperity, and resilience of our communities.'' It states a policy to pursue science-based, sustainable forest and land management; conserve America's mature and old-growth forests on Federal lands; invest in forest health and restoration; support indigenous traditional ecological knowledge and cultural and subsistence practices; honor Tribal treaty rights; and deploy climate-smart forestry practices and other nature-based solutions to improve the resilience of our lands, waters, wildlife, and communities in the face of increasing disturbances and chronic stress arising from climate impacts.

The Executive order (E.O.) calls for defining, identifying, and inventorying our nation's old and mature forests, then stewarding them for future generations to provide clean air and water, sustain plant and animal life, and respect their special importance to Tribal Nations. This proposed rule would advance all of these objectives.

IV. Section-by-Section Discussion of Proposed Rule

Subpart 6101—General Information

Section 6101.1—Purpose

This section describes the overall purpose for this proposed rule. It is designed to ensure healthy wildlife habitat, clean water, and ecosystem resilience so that our public lands can resist and recover from disturbances like drought and wildfire. It also aims to enhance mitigation options, establishing a regulatory framework for those seeking to use the public lands, while also ensuring that the public enjoys the benefits of mitigation measures. The proposed rule discusses the use of protection and restoration actions, as well as tools such as land health evaluations, inventory, assessment, and monitoring. Pursuant to Executive Order 14072, Strengthening the Nation's Forests, Communities, and Local Economies, and consistent with managing for multiple use and sustained yield, the BLM is working on various aspects of ensuring that forests on Federal lands, including old and mature forests, are managed to: promote their continued health and resilience; retain and enhance carbon storage; conserve biodiversity; mitigate the risk of wildfires; enhance climate resilience; enable subsistence and cultural uses; provide outdoor recreational opportunities; and promote sustainable local economic development. While there are ongoing inter-departmental efforts related to implementing the Executive Order, the BLM is also interested in public comments on whether there are opportunities for this rule to incorporate specific direction to conserve and improve the health and resilience of forests on BLM-managed lands. What additional or expanded provisions could address this issue in this rule? How might the BLM use this rule to foster ecosystem resilience of old and mature forests on BLM lands?

Section 6101.2—Objectives

This section lists the six specific objectives of the proposed rulemaking. These objectives were discussed at length earlier in the preamble for this proposed rule.

Section 6101.3—Authority

This section identifies the authorities under which this proposed rule will be promulgated, which include the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), as amended, and the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202).

Section 6101.4—Definitions

This section provides new definitions for concepts such as conservation, resilient ecosystems, sustained yield, mitigation, and unnecessary or undue degradation, along with others used throughout the proposed rule text. These definitions apply only in 43 CFR part 6100.

The proposed rule would define the term ''best management practices'' as state-of-the-art, efficient, appropriate, and practicable measures for avoiding, minimizing, rectifying, reducing, compensating for, or eliminating impacts over time. This definition would provide clarity and consistency as the BLM authorizes restoration and compensatory mitigation actions under the proposed rule.

The proposed rule would define the term ''casual use'' so that, in reference to conservation leases, it would clarify that the existence of a conservation lease would not in and of itself preclude the public from accessing public lands for noncommercial activities such as recreation. Some public lands could be temporarily closed to public access for purposes authorized by conservation leases, such as restoration activities or habitat improvements. However, in general, public lands leased for conservation purposes under the proposed rule would continue to be open to public use.

The proposed rule would define ''conservation'' in the context of these regulations to mean maintaining resilient, functioning ecosystems by protecting or restoring natural habitats and ecological functions. The overarching purpose of the proposed rule is to promote the use of conservation to ensure ecosystem resilience, and in doing so the proposed rule would clarify conservation as a use within the BLM's multiple use framework, including in decisionmaking, authorization, and planning processes. The proposed rule would include a stated objective to promote conservation on public lands, and proposed subpart 6102 would outline principles, directives, management actions and tools—including establishing a new tool in conservation leases—to meet this objective and fulfill the purpose of the proposed rule. Because conservation is the foundational concept for the proposed regulations, the proposed definition would provide important guidance and clarity for the BLM to meet the spirit and intent of the proposed rule. Within the framework of the proposed rule, ''protection'' and ''restoration'' together constitute conservation.

The proposed rule would define the term ''disturbance'' to provide the BLM with guidance in identifying and assessing impacts to ecosystems, restoring affected public lands, and minimizing and mitigating future impacts. Identifying and mitigating disturbances and restoring ecosystems are important components of ensuring ecosystem resilience on public lands.

The proposed rule would define the term ''effects'' as the direct, indirect,

and cumulative impacts from a public land use, and would clarify that the term should be viewed synonymously with the term ''impacts'' for the purposes of the rule.

The proposed rule would define the term ''high-quality information'' so that its use would ensure that the best available scientific information underpins decisions and actions that would be implemented under the proposed rule to achieve ecosystem resilience. The proposed definition would also clarify that Indigenous Knowledge can be high-quality information that should be considered alongside other information that meets the standards for objectivity, utility, integrity, and quality set forth in Federal law and policy.

The proposed rule would define the terms ''important,'' ''scarce,'' and ''sensitive'' resources to provide clarity and consistency in BLM's implementation of mitigation requirements, including under the proposed rule.

The proposed rule would define the term ''Indigenous Knowledge'' to reflect the Department of the Interior's policies, responsibilities, and procedures to respect, and equitably promote the inclusion of, Indigenous Knowledge in the Department's decision making, resource management, program implementation, policy development, scientific research, and other actions.

The proposed rule would define the term ''intact landscape'' to guide the BLM with implementing direction. The proposed rule (§ 6102.1) would require the BLM to identify intact landscapes on public lands, manage certain landscapes to protect their intactness, and pursue strategies to protect and connect intact landscapes.

The proposed rule would define ''land enhancement'' to provide clarity for interpreting provisions of the proposed rule that would authorize the BLM to issue conservation leases for the purpose of facilitating land enhancement activities.

The proposed rule would define ''landscape'' to characterize a meaningful area of land and waters on which restoration, protection and other management actions will take place. Assessing how BLM's management can affect the functionality and resilience of ecosystems may require considering resources at the landscape scale.

The proposed rule would define ''mitigation'' consistent with the definition provided by the Council on Environmental Quality regulations (40 CFR 1508.20), which identify various ways to address adverse impacts to resources, including steps to avoid, minimize, and compensate for residual impacts. As a tool to achieve ecosystem resilience of public lands, the BLM will generally apply a mitigation hierarchy to address impacts to public land resources, seeking to avoid, then to minimize, and then to compensate for any residual impacts. This definition and the related provisions in this proposed rule supplement existing DOI policy, which among other things provides boundaries to ensure that compensatory mitigation is durable and effective.

The proposed rule would define the term ''mitigation strategies'' to identify documents that identify, evaluate, and communicate potential mitigation needs and mitigation measures in advance of anticipated public land uses.

The proposed rule would define the term ''monitoring'' to describe a critical suite of activities involving observation and data collection to evaluate (1) existing conditions, (2) the effects of management actions, or (3) the effectiveness of actions taken to meet management objectives. Management for ecosystem resilience requires the BLM to understand how proposed use activities impact resource condition at many scales. Monitoring is a critical component of BLM's Assessment, Inventory and Management (AIM) framework that provides a standardized strategy for assessing natural resource condition and trends on BLM public lands.

The proposed rule would define the term ''permittee'' to identify those persons with a valid permit, right-of-way grant, lease, or other land use authorization from the BLM. The proposed rule largely discusses ''permittees'' when identifying the responsibility of parties in the context of mitigation and in discussing the opportunities to rely on third parties in complying with mitigation requirements.

The proposed rule would define ''protection'' in the context of the overarching purpose of the rule, which is to promote the use of conservation measures to ensure ecosystem resilience of public lands. ''Protection'' is a critical component of conservation, alongside restoration, and describes acts or processes to preserve resources and keep them safe from degradation, damage, or destruction. The proposed rule (§ 6101.2) would include a stated objective to promote the protection of intact landscapes on public lands, as a critical means to achieve ecosystem resilience.

The proposed rule would define ''public lands'' in order to clarify the scope of the proposed rule and its intended application to all BLM-managed lands and uses. The proposed definition is the same as the definition of ''public lands'' that appears at § 6301.5.

The proposed rule would define ''reclamation'' to identify restoration practices intended to achieve an outcome that reflects project goals and objectives, such as site stabilization and revegetation. While ''reclamation'' is a part of a continuum of restoration practices, it contrasts with other actions that are specifically designed to recover ecosystems that have been degraded, damaged, or destroyed. Reclamation often involves initial practices that can prepare projects or sites for further restoration activities. The proposed rule (§ 6102.4–2) discusses reclamation in the context of bonding conservation leases to ensure lessees hold sufficient bond amounts to provide for the reclamation of the conservation lease area(s) and the restoration of any lands or surface waters adversely affected by conservation lease operations.

The proposed rule would define ''resilient ecosystems'' in the context of the rule's foundational precept that BLM's management of public lands on the basis of multiple use and sustained yield relies on resilient ecosystems. The purpose of the proposed rule is to promote the use of conservation to ensure that ecosystems on public lands can resist disturbance maintain and regain their function following environmental stressors such as drought and wildfire. The proposed rule identifies and requires the use of protection and restoration actions, as well as tools such as land health evaluations, inventory, assessment, and monitoring to ensure BLM is managing for resilient ecosystems.

The proposed rule would define ''restoration'' in the context of the overarching purpose of this proposed rule which is to promote the use of conservation to ensure the ecosystem resilience of public lands. ''Restoration'' is a critical component of conservation, alongside protection, and describes acts or processes of conservation that assist the recovery of an ecosystem that has been degraded, damaged, or destroyed. The BLM employs a variety of restoration approaches, including mitigation, remediation, revegetation, rehabilitation, and reclamation. The proposed rule (§ 6102.3) would direct the BLM to emphasize restoration across the public lands and requires the inclusion of a restoration plan in any new or revised Resource Management Plan.

The proposed rule would use the FLPMA definition of ''sustained yield.''

This proposed rule promotes the use of conservation to achieve resilient ecosystems on public lands, which are essential to managing for multiple use and sustained yield.

The proposed rule would define ''unnecessary or undue degradation'' in the context of these regulations to mean ''harm to land resources or values that is not needed to accomplish a use's goals or is excessive or disproportionate.'' This proposed definition is consistent with BLM's affirmative obligation under FLPMA to take action to prevent unnecessary or undue degradation. The proposed rule would establish overarching principles for ecosystem resilience and would direct the BLM to implement those principles in part by preventing unnecessary or undue degradation in its decisionmaking.

Section 6101.5—Principles for Ecosystem Resilience

The proposed rule relies upon express direction provided in FLPMA to manage public lands on the basis of multiple use and sustained yield, and it would establish the principle that the BLM must conserve renewable natural resources at a level that maintains or improves ecosystem resilience in order to achieve this mission.

Section 6101.5(d) in the proposed rule would direct authorized officers to implement principles of ecosystem resilience by recognizing conservation as a land use within the multiple use framework, including in decisionmaking, authorization, and planning processes; protecting and maintaining the fundamentals of land health; restoring and protecting intact public lands; applying the full mitigation hierarchy to address impacts to species, habitats, and ecosystems from land use authorizations; and preventing unnecessary or undue degradation.

Subpart 6102—Conservation Use To Achieve Ecosystem Resilience

The proposed rule would clarify that conservation is a use on par with other uses of public lands under FLPMA's multiple use framework. FLPMA directs the BLM to manage the public lands in a manner that protects the quality of ecological, wildlife, recreation, scenic, environmental, scientific, air, and water resources, among other resources and values, and that protects certain public lands in their natural condition. The BLM implements this mandate through land use plan designations, allocations, and other planning decisions that conserve public land resources and seek to balance conservation use with other uses such as energy development and recreation. The BLM also implements this mandate in other decisionmaking and management actions by promoting conservation use, limiting subsequent authorizations when incompatible with conservation use, and mitigating impacts to natural resources on public lands. The proposed rule would provide specific direction for implementing certain programs in a way that emphasizes conservation use and provide new tools and direction for managing conservation use to ensure ecosystem resilience on public lands.

Section 6102.1—Protection of Intact Landscapes

Section 6102.1(a) of the proposed rule would identify the principles for protecting intact landscapes in the context of increased pressure and increased landscape vulnerability due to climate change and other disturbance. Section 6102.1(b) would call on authorized officers to prioritize protection of such landscapes.

Section 6102.2—Management To Protect Intact Landscapes

Authorized officers would be required by § 6102.2(a) and (b) to identify and seek to maintain intact landscapes, including by utilizing available watershed condition classifications and other available data. During the resource management planning process, some tracts of public lands should be put into a conservation use, such as by appropriately designating or allocating the land, to maintain or improve ecosystem resilience. When determining, through planning, whether conservation use is appropriate in a given area, authorized officers would determine ''which, if any'' landscapes to manage to protect intactness, necessarily taking into account other potential uses in accordance with the BLM's multiple use management approach. (§ 6102.2(b)) In identifying the areas that are most suitable for management as intact landscapes, the BLM could work with communities to identify areas that the communities have targeted for strategic growth and development; managing those areas for intactness is less likely to be appropriate. Section 6102.2(c) would require authorized officers to prioritize acquisition of lands or interests in lands that would further protect and connect intact landscapes and functioning ecosystems, and § 6102.2(d) would direct the BLM to develop a national system for collecting and tracking disturbance data and to use those data to minimize disturbance and improve ecosystem resilience.

Section 6102.3—Restoration

Restoration is the process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed. The BLM employs a variety of restoration approaches, including mitigation, remediation, revegetation, rehabilitation, and reclamation. The proposed rule would direct the BLM to emphasize restoration across the public lands to enable achievement of its sustained yield mandate and would encourage active management to promote restoration when appropriate to achieve ecosystem resilience.

Section 6102.3–1—Restoration Prioritization

Section 6102.3–1 would direct authorized officers to identify priority landscapes for restoration at least every five years. Landscape prioritization is to be based on land health and watershed condition assessments, the likelihood that restoration efforts would succeed, partnership opportunities that would enable coordination across a broader landscape, benefits to local communities, and opportunities also to prevent unnecessary or undue degradation of the public lands.

Section 6102.3–2—Restoration Planning

The proposed rule would require authorized officers to include a restoration plan in any new or revised Resource Management Plan, which would have to address criteria set forth in § 6102.3–2(a). Included in the restoration plan would be actions that, under § 6102.3–2(b), would be implemented to achieve set goals and objectives; the actions would have to be performed at the appropriate spatial and temporal scale, and they would have to address the cause of degradation. Authorized offers would plan in 5-year increments, but of course the schedule could describe longer term goals and efforts. Actions would be coordinated with partners, and the BLM would use conservation leases issued under § 6102.4 for the purpose of restoring, managing, and monitoring priority landscapes. Locally appropriate best management practices would be implemented in accordance with § 6102.3–2(b)(5). Authorized officers would also be required to track progress toward achieving restoration goals and ensure restoration projects are consistent with the land health standards, restoration goals and objectives, best management practices, and Resource Management Plan restoration plans.

Section 6102.4—Conservation Leasing

Section 302(b) of FLPMA, 43 U.S.C. 1732(b), grants the Secretary authority to regulate through appropriate instruments the use, occupancy, and development of the public lands. As the U.S. Court of Appeals for the Tenth Circuit has recognized, the authority granted in section 302(b) is considerably broader than the authority granted in subject-specific provisions of FLPMA. *Greater Yellowstone Coal.* v. *Tidwell,* 572 F.3d 1115, 1126–27 (10th Cir. 2009). Under that broad authority, the proposed rule would provide a framework for the BLM to issue conservation leases on public lands for the purpose of pursuing ecosystem resilience through mitigation and restoration. The BLM will determine whether a conservation lease is an appropriate mechanism based on the context of each proposed conservation use and application, not necessarily as a specific allocation in a land use plan. Conservation leases could be issued to any qualified individual, business, non-governmental organization, or Tribal government. The BLM seeks comments on whether State and local governments, including state agencies managing fish and wildlife, also should be eligible for holding conservation leases.

Section 6102.4(a)(2) would establish that conservation leases would be issued for the necessary amount of time to meet the lease objective and specify that a lease issued for restoration or protection purposes would be issued for a renewable term of up to 10 years, whereas a lease issued for mitigation purposes would be issued for a term commensurate with the impact it is mitigating. All conservation leases would be reviewed for consistency with lease provisions at regular intervals and could be extended beyond their primary terms.

Section 6102.4(a)(3) would specify that conservation leases may be issued either for ''restoration or land enhancement'' or ''mitigation.'' The proposed rule would only authorize issuance of conservation leases for ecosystem protection where that protection is related to a restoration or land enhancement project or to support mitigation for a particular action. For example, as part of authorizing a renewable energy project on public lands, the BLM and the project proponent may agree to compensate for loss of wildlife habitat by restoring or enhancing other habitat areas. A conservation lease could be used to protect those areas. Similarly, the BLM may require compensatory mitigation for residual impacts that cannot be avoided. A conservation lease could be used to put compensatory mitigation dollars to work restoring compromised landscapes.

This provision is not intended to provide a mechanism for precluding other uses, such as grazing, mining, and recreation. Conservation leases should not disturb existing authorizations, valid existing rights, or state or Tribal land use management. Rather, this proposed rule is intended to raise conservation up to be on par with other uses under the principles of multiple use and sustained yield.

The BLM requests public comment on the following aspects of the conservation lease proposal.

- Is the term ''conservation lease'' the best term for this tool?
- What is the appropriate default duration for conservation leases?
- Should the rule constrain which lands are available for conservation leasing? For example, should conservation leases be issued only in areas identified as eligible for conservation leasing in an RMP or areas the BLM has identified (either in an RMP or otherwise) as priority areas for ecosystem restoration or wildlife habitat?
- Should the rule clarify what actions conservation leases may allow?
- Should the rule expressly authorize the use of conservation leases to generate carbon offset credits?
- Should conservation leases be limited to protecting or restoring specific resources, such as wildlife habitat, public water supply watersheds, or cultural resources?

Proposed § 6102.4(b) and (c) would set forth the application process for acquiring a conservation lease. Applicants would be required to submit detailed information regarding the proposed conservation use, anticipated impacts and costs, conformance with BLM plans, programs and policies, and the schedule for any restoration activities. The authorized officer would be able to require additional information such as environmental data and proof that the applicant has the technical and financial capability to perform the conservation activities. Once a conservation lease is issued, § 6102.4(a)(4) would preclude the BLM, subject to valid existing rights and applicable law, from authorizing other uses of the leased lands that are inconsistent with the authorized conservation use. Section 6102.4(a)(5) clarifies that the rule itself should not be interpreted to exclude public access to leased lands for casual use of such lands, although the purposes of a lease may require that limitations to public access be put in place in a given instance (for example, temporarily limiting public access to newly restored areas).

Section 6102.4(d) would provide for assignment or transfer of a conservation lease if no additional rights would be conveyed and the proposed assignee or transferee is qualified to hold the lease.

Conservation leases would be available on BLM-managed lands that are not allocated to inconsistent uses, including lands within units of the National Landscape Conservation System. The BLM requests public comments on managing conservation leases within the National Landscape Conservation System, including whether separate regulations should apply to these areas.

Cost recovery, rents, and fees for conservation leases would be governed by existing regulations at 43 CFR 2920.6 and 2920.8. Under those regulations, the BLM must charge a rent of at least fair market value. The BLM seeks comment on how fair market value would be determined in the context of restoration or preservation. Would existing methods for land valuation provide valid results? Would lands with valuable alternative land uses be prohibitively expensive for conservation use? Should the BLM incorporate a public benefit component into the rent calculation to account for the benefits of ecosystem services?

Section 6102.4–1—Termination and Suspension of Conservation Leases

Proposed § 6102.4–1 would outline processes for suspending and terminating conservation leases. Where the lease holder fails to comply with applicable requirements, fails to use the lease for its intended purpose, or cannot fulfill the lease's purpose, the BLM would be authorized to suspend or terminate a conservation lease. An authorized officer would be authorized to issue an immediate temporary suspension of the lease upon determination that a noncompliance issue adversely affects or poses a threat to public lands or public health. Following termination, the lease holder would have sixty days to fulfill its obligation to reclaim the site, *i.e.,* return the site to its prior condition or as otherwise provided in the lease. That obligation is distinct from the goal of restoring the site to its ecological potential that underlies the lease.

Section 6102.4–2—Bonding for Conservation Leases

The proposed rule includes bonding obligations for any conservation use that

involves surface-disturbing activities, with § 6102.4–2 establishing regulations for conservation lease bonds. The BLM seeks public comment on whether this rule should allow authorized officers to waive bonding requirements in certain circumstances, such as when a Tribal Nation seeks to restore or preserve an area of cultural importance to the Tribe. Should the waiver authority be limited to such circumstances or are there other circumstances that would warrant a waiver of the bonding requirement?

Section 6102.5—Management Actions for Ecosystem Resilience

Proposed § 6102.5 would set forth a framework for the BLM to make wise management decisions based on science and data, including at the planning, permitting, and program levels, that would help to ensure ecosystem resilience. As part of this framework, authorized officers would be required to identify priority watersheds, landscapes, and ecosystems that require protection and restoration efforts; develop and implement mitigation, monitoring and adaptive management strategies to protect resilient ecosystems; and meaningfully consult with Tribes and Alaska Native Corporations. Authorized officers would be required to include Indigenous Knowledge in decisionmaking and encourage Tribes to suggest ways in which Indigenous Knowledge can be used to inform the development of alternatives, analysis of effects, and identification of mitigation measures.

Consistent with applicable law and the management of the area, authorized officers would also be required to avoid authorizing any use of the public lands that permanently impairs ecosystem resilience. Permanent impairment of ecosystem resilience would be difficult or impossible to avoid, for example, on lands on which the BLM has authorized intensive uses, including infrastructure and energy projects or mining, or where BLM has limited discretion to condition or deny the use. The proposed rule also would require the authorized officer to consider a precautionary approach for resource use when the impact on ecosystem resilience is unknown or cannot be quantified and provide justification for decisions that may impair ecosystem resilience. In other words, the proposed rule does not prohibit land uses that impair ecosystem resilience; it simply requires avoidance and an explanation if such impairment cannot be avoided.

To ensure the best available science is underpinning all management actions, the proposed rule would require the BLM to use national and site-based assessment, inventory, and monitoring data, along with other high-quality information, as multiple lines of evidence to evaluate resource conditions and inform decisionmaking. In particular, proposed § 6102.5(c) would require the authorized officer to gather high-quality data and select relevant indictors, then translate the values from those indicators into a watershed condition classification framework and document the results. The goal is to use monitoring objectives and possibly conceptual models to identify if watersheds are in properly functioning condition and how the landscape is functioning as a whole.

Section 6102.5–1—Mitigation

The proposed rule would affirm that the BLM will generally apply the mitigation hierarchy of avoid, minimize, and compensate for impacts to all public land resources. Further, § 6102.5–1(a) would require mitigation to address adverse impacts in the case of important, scarce, or sensitive resources, to the maximum extent possible.

The proposed rule would authorize the BLM to use third-party mitigation fund holders to facilitate compensatory mitigation. Proposed § 6102.5–1(d) would require authorized officers to establish mitigation accounts as appropriate when multiple permittees have similar compensatory mitigation requirements, or a single permittee has project impacts that require substantial, long-term compensatory mitigation. Proposed § 6102.5–1(f) would establish criteria that third parties must meet to be approved as mitigation fund holders. Among other things, the proposed rule would require potential mitigation fund holders to have ''a history of successfully holding and managing mitigation, escrow, or similar corporate accounts.'' This language is intended to ensure that mitigation fund holders have sufficient experience to ensure that they are capable of managing funds. The BLM seeks comment on this language. Does it create a barrier to entry for new mitigation banks? Is there alternative language that would be preferable? The requirement that a third party lack any ''family connection'' to the mitigating party refers to the leadership of the potential mitigation fund holder.

Subpart 6103 Tools for Achieving Ecosystem Resilience

Section 6103.1—Fundamentals of Land Health

Proposed § 6103.1 would establish four fundamentals of land health—watershed function, ecological processes, water quality, and wildlife habitat—that would form the basis for land health standards and guidelines that the BLM would develop in land use plans under § 6103.1–1 of this proposed rule. Fundamentals of land health are currently addressed in the BLM's grazing regulations for rangeland health (43 CFR 4180.1 (2005)). The proposed rule would extend the fundamentals of land health to all BLM lands and program areas. The BLM is not proposing any changes to the four fundamentals of land health as articulated in the applicable grazing regulations.

Section 6103.1–1—Land Health Standards and Guidelines

Proposed § 6103.1–1 would instruct authorized officers to implement land health standards and guidelines that conform to the fundamentals of land health across all lands and program areas. This includes reviewing land health standards and guidelines during the land use planning process and developing new or revising existing land health standards and guidelines as necessary, and periodically reviewing land health standards and guidelines in conjunction with regular land use plan evaluations. Until the authorized officer has an opportunity to review and update land health standards and guidelines through land use planning processes, § 6103.1–1(a)(1) of the proposed rule would direct authorized officers to apply existing land health standards and guidelines, including those previously established under subpart 4180 of the agency's grazing regulations (fundamentals of rangeland health), across all lands and program areas.

Proposed § 6103.1–1(b) through (d) would require the authorized officer to establish goals, objectives, and success indicators to ensure that each land health standard can be measured against resource conditions and to periodically review authorized uses for consistency with the fundamentals of land health. Once land health standards and guidelines are established, any action in response to not meeting them would be subject to § 6103.1–2(e)(2) and taken in a manner that takes into account existing uses and authorizations. Under the proposed rule, the BLM may establish national indicators in support of the implementation of the fundamentals of land health.

Section 6103.1–2—Land Health Assessments, Evaluations, and Determinations

The proposed rule would require authorized officers to consider land

health assessments, evaluations, and determinations across all program areas to inform decisionmaking, including preparing new land health assessments, evaluations, and determinations as warranted. Proposed § 6103.1–2(c) would provide direction for completing land health evaluations, including using multiple lines of evidence and documenting supporting information.

In cases where land health standards are not being achieved, proposed § 6103.1–2(d) would require a determination of causal factors. If existing management practices are determined to be a causal factor, the proposed rule would require the authorized officer to take appropriate action to make significant progress toward fulfillment of the standards and compliance with the guidelines. That requirement would be limited, however, by the caveat that appropriate action must be ''consistent with applicable law and the terms and conditions of existing authorizations.'' Thus, when determining what actions are ''appropriate'' to meet the land health standards, the authorized officer would have to take into account existing uses and authorizations.

Section 6103.2—Inventory, Assessment, and Monitoring

The proposed rule would require the BLM to complete watershed condition classifications as part of all land use planning. It is anticipated that watershed condition classifications would frequently be completed not by BLM state offices, but by national-level resources, such as by the National Operations Center, utilizing standardized procedures and existing data and analyses.

Proposed § 6103.2(b) would clarify that the BLM's inventory of public lands includes both landscape components and core indicators that address land health fundamentals, and would require the use of inventory, assessment, and monitoring information, including standardized quantitative monitoring data, remote sensing maps, and geospatial analyses, to inform decisionmaking across program areas. Proposed § 6103.2(c) would establish principles to ensure that inventory, assessment, and monitoring activities are evidence-based, standardized, efficient, and defensible.

Subpart 1610—Resource Management Planning

Section 1610.7–2—Designation of Areas of Critical Environmental Concern

The proposed rule includes changes to the land use planning regulations to emphasize the role of ACECs as the principal designation for public lands where special management attention is required to protect important natural, cultural, and scenic resources, and to protect against natural hazards. It would also emphasize the requirement that the BLM give priority to the identification, evaluation, and designation of ACECs during the planning process as required by FLPMA and would provide additional clarity and direction for complying with this statutory requirement. The proposed rule would codify in regulation procedures for considering and designating potential ACECs that are currently only partially described in regulation and partially described in agency policy.

Proposed § 1610.7–2(c) would require authorized officers to identify areas that may be eligible for ACEC status early in the planning process and would highlight the need to target areas for evaluation based on resource inventories, internal and external nominations, and existing ACEC designations.

Proposed § 1610.7–2(d) would provide more specificity for determining whether an area meets the criteria for ACEC designation of relevance, importance, and requiring special management attention. Requiring a finding that special management attention is necessary is consistent with BLM practice but is not a feature of the existing regulations.

Under the proposed rule § 1610.7–2(d)(2), resources, values, systems, or processes may meet the importance criterion if they contribute to ecosystem resilience, including by protecting landscape intactness and habitat connectivity. The proposed rule would also clarify the scope of the importance criterion by striking ''more than local significance'' in current § 1610.7–2(a)(2). The BLM has found the use of ''local significance'' in the existing definition creates confusion because it may be conflated with the separate question under NEPA as to whether environmental impacts are ''significant.'' Moreover, requiring something more than ''local significance'' is unnecessarily restrictive. In the context of ACECs, a wide variety of areas can support the BLM's management of public lands by contributing to ecosystem resilience.

Proposed § 1610.7–2(e) would newly emphasize that resources, values, systems, processes, or hazards that are found to have relevance and importance are likely to warrant special management attention and would further identify four considerations when evaluating the need for special management attention, to inform potential ACEC designations in a land use plan.

Proposed § 1610.7–2(g) would clarify that land use plans must include at least one plan alternative that analyzes in detail all proposed ACECs, in order to analyze the consequences of both providing and not providing special management attention to identified resources.

Proposed § 1610.7–2(i) would require authorized officers to ensure that inventories used to obtain information and data on the relevance and importance of values, resources, systems or processes, and natural hazards are kept current, consistent with section 201(a) of FLPMA ''so as to reflect changes in conditions and to identify new and emerging resource and other values'' (43 U.S.C. 1711(a)). Authorized officers (likely, here, BLM State Directors) would be required to produce annual reports detailing activity plan status and completed and planned implementation actions for designated ACECs.

Section 1610.7–2(j) would direct that ACEC designations may be removed only when special management attention is no longer needed because the identified resources are being provided an equal or greater level of protection through alternate means or the identified resources are no longer present.

The proposed rule eliminates the existing requirement in current § 1610.7–2(b) that the BLM publish a **Federal Register** notice relating to proposed ACECs and allow for 60 days of comment, in addition to the other **Federal Register** publication requirements that apply to land use planning. The BLM has found that these **Federal Register** publication requirements do not provide value above and beyond the general public involvement process, including through notices in the **Federal Register**, that otherwise applies to land use planning. The public would still have opportunity to comment on proposed ACECs through that latter process.

Finally, throughout the proposed rule under § 1610.7–2, the term ''value'' would be replaced with the phrase ''resources, values, systems, processes, or hazards.'' ''Value'' has been used as a shorthand reference to all the items in the longer phrase but doing so has created confusion. The proposed rule provides for this change as well as other minor changes designed to improve readability throughout the rule text.

The proposed rule provides that ''ACECs shall be managed to protect the relevant and important resources for

which they are designated.'' The BLM is interested in public comment on whether additional regulatory text would help the BLM best fulfill its mandate under FLPMA section 202(c)(3) to ''give priority to the . . . protection of [ACECs].'' Should the regulations further specify how ACECs should be managed?

Severability

The provisions of the proposed rule should be considered separately. If any portion of the rule were stayed or invalidated by a reviewing court, the remaining elements would continue to provide BLM with important and independently effective tools to advance conservation on the public lands. Hence, if a court prevents any provision of one part of this proposed rule from taking effect, that should not affect the other parts of the proposed rule. The remaining provisions would remain in force.

V. Procedural Matters

Regulatory Planning and Review (Executive Order 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The OIRA has determined that this proposed rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule making process must allow for public participation and an open exchange of ideas. The BLM has developed this proposed rule in a manner consistent with these requirements.

As outlined in the attached Economic and Threshold Analysis, the proposed rule would not have a significant effect on the economy.

For more detailed information, see the Economic and Threshold analysis prepared for this proposed rule. This analysis has been posted in the docket for the rule on the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE92'', click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the ''notice-and-comment'' rulemaking requirements found in the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

For the purpose of conducting its review pursuant to the RFA, the BLM believes that the proposed rule would not have a ''significant economic impact on a substantial number of small entities,'' as that phrase is used in 5 U.S.C. 605.

Congressional Review Act (CRA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more. The BLM did not estimate the annual benefits that this proposed rule would provide to the economy. Please see the Economic and Threshold Analysis for this proposed rule for a more detailed discussion.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The proposed rule would benefit small businesses by streamlining the BLM's processes.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The proposed rule would not have adverse effects on any of these criteria.

Unfunded Mandates Reform Act (UMRA)

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The proposed rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. Under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*), agencies must prepare a written statement about benefits and costs, prior to issuing a proposed or final rule that may result in aggregate expenditure by State, local, and tribal governments, or the private sector, of $100 million or more in any 1 year.

This proposed rule is not subject to the requirements under the UMRA. The proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any one year. The proposed rule would not significantly or uniquely affect small governments. A statement containing the information required by the UMRA is not required.

Government Actions and Interference With Constitutionally Protected Property Rights Takings (E.O. 12630)

This proposed rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. The proposed rule would not interfere with private property. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of E.O. 12988. Specifically, this proposed rule:

a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Meets the criteria of section 3(b)(2) requiring that all regulations be written

in clear language and contain clear legal standards.

Consultation and Coordination With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior (DOI) strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this proposed rule under the DOI's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized 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, and that consultation under the DOI's tribal consultation policy is not required. However, consistent with the DOI's consultation policy (52 Departmental Manual 4) and the criteria in E.O. 13175, the BLM will consult with federally recognized Indian Tribes on any proposal that may have a substantial direct effect on the Tribes.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) generally provides that an agency may not conduct or sponsor, and not withstanding any other provision of law a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. This proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the PRA. Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)).

OMB has generally approved the existing information collection requirements contained in the BLM's regulations contained in 43 CFR subpart 1610 under OMB Control Number 1004–0212. The proposed rule would not result in any new or revised information collection requirements that are currently approved under that OMB Control Number.

For the reasons set out in the preamble, the BLM proposes to amend 43 CFR by creating part 6100 which would result in new information collection requirements that require approval by OMB. The information collection requirement contained in part 6100 will allow the BLM to issue a conservation lease to qualified individuals or businesses or State, local, or Tribal governments for the purpose of ensuring ecosystem sustainability. The proposed new information collection requirements contained in this proposed rule are discussed below.

New Information Collection Requirements

Section 6102.4 (b) and (c)—Conservation Leasing: Applications for conservation leases shall be filed with the Bureau of Land Management office having jurisdiction over the public lands covered by the application. Applications for conservation leases shall include a description of the proposed conservation use in sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed conservation use, the impacts, if any, on the environment, the public or other benefits from the land use, the approximate cost of the proposed conservation use, any threat to public health and safety posed by the proposed use, and whether the proposed use is, in the opinion of the applicant, in conformance with the Bureau of Land Management plans, programs, and policies for the public lands covered by the proposed use. The description shall include but not be limited to:

- Details of the proposed uses and activities;
- A description of all facilities for which authorization is sought, including access needs and special types of easements that may be needed;
- A map of sufficient scale to allow the required information to be legible as well as a legal description of primary and alternative project locations;
- Schedule for restoration or land improvement activities; and
- Name and legal mailing address of the applicant.

Section 6102.4(c)(1)(E)—Conservation Leasing (additional information): After review of the project description, the authorized officer may require the applicant to provide additional studies or to submit additional environmental data if such data are necessary for the BLM to decide whether to issue, issue with modification, or deny the proposed conservation use. An application for the use of public lands may require documentation or proof of application for additional private, State, local or other Federal agency licenses, permits, easements, certificates, or other approval documents. The authorized officer may require evidence that the applicant has, or prior to commencement of conservation activities will have the technical and financial capability to operate, maintain, and terminate the authorized land use.

Section 6102.4–1(d)(3)—Termination and Suspension of Conservation Leases: Upon determination that there is noncompliance with the terms and conditions of a conservation lease which adversely affects land or public health or safety, or impacts ecosystem sustainability, the authorized officer shall issue an immediate temporary suspension. Any time after an order of suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

Section 6102.4–2(a)—Bonding for Conservation Leases: Prior to the commencement of surface-disturbing activities, the conservation lease holder shall submit a surety or a personal bond, conditioned upon compliance with all the terms and conditions of the conservation lease(s) covered by the bond.

Section 6102.5–1(e)—Mitigation—Approval of third parties as mitigation fund holders: § 6102.5–1(e) would allow in certain limited circumstances authorized officers to approve third parties as mitigation fund holders to establish mitigation accounts for use by entities granted land use authorizations by the BLM. The authorized officer will approve the use of a mitigation account by a permittee only if a mitigation fund holder has a written agreement with the BLM.

Section 6102.5–1(g)—Mitigation—Approval of third parties as mitigation fund holders/State and local government agencies: State and local government agencies are limited in their ability to accept, manage, and disburse funds for the purpose outlined in § 6102.5–1 and generally should not be approved by the BLM to hold mitigation funds for compensatory mitigation sites on public or private lands. An exception may be made where a government agency is able to demonstrate, to the satisfaction of the BLM, that they are acting as a fiduciary for the benefit of the mitigation project or site, essentially as if they are a third party, and can show that they have the authority and perform the duties described in § 6102.5–1.

The information collection requirements contained in this proposed rule are needed to ensure that accountability through restoration monitoring and tracking is carried out effectively and that project goals are being met. The estimated annual

information collection burdens for this proposed rule are outlined below:

Title of Collection: Ecosystem Resilience and Conservation (43 CFR part 6100).

OMB Control Number: 1004–0NEW.

Form Number: None.

Type of Review: New collection of information (Request for a new OMB Control Number).

Respondents/Affected Public: Private sector businesses; Not-for-profit organizations; and State, local, or Tribal governments.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Estimated Completion Time per Response: Varies from 5 hours to 240 hours per response, depending on activity.

Number of Respondents: 37.

Annual Responses: 37.

Annual Burden Hours: 1,380.

Annual Burden Cost: $0.

If you want to comment on the information-collection requirements of this proposed rule, please send your comments and suggestions on this information-collection by the date indicated in the **DATES** and **ADDRESSES** sections as previously described.

National Environmental Policy Act (NEPA)

The BLM intends to apply the Department Categorical Exclusion (CX) at 43 CFR 46.210(i) to comply with the National Environmental Policy Act. This CX covers policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. The BLM plans to document the applicability of the CX concurrently with development of the final rule.

Actions Concerning Regulations That Significantly Affects Energy Supply, Distribution, or Use (E.O. 13211)

Federal agencies must prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (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. This proposed rule is not a significant action within the meaning of Executive Order 12866 or any successor order. This proposed rule does not affect energy supply or distribution.

Clarity of This Regulation (Executive Orders 12866, 12988 and 13563)

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1988, to write all rules in plain language. This means that each rule must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help the BLM revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Authors

The principal authors of this proposed rule are: Stephanie Miller, BLM Deputy Division Chief, Wildlife Conservation; Darrin King, BLM Division of Regulatory Affairs; Chandra Little, BLM Division of Regulatory Affairs, assisted by the DOI Office of the Solicitor.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary for Land and Minerals Management.

List of Subjects

43 CFR Part 1600

Administrative practice and procedure, Coal, Environmental impact statements, Environmental protection, Intergovernmental relations, Public lands, Preservation and conservation.

43 CFR Part 6100

Ecosystem resilience, Conservation use, Land health, and Restoration.

Accordingly, for the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR part 1600 and add a new 43 CFR part 6100 as set forth below:

PART 1600—PLANNING, PROGRAMMING, BUDGETING

■ 1. The authority citation for part 1600 continues to read as follows:

Authority: 43 U.S.C. 1711–1712

■ 2. Amend § 1610.7–2 to read as follows:

§ 1610.7–2 Designation of areas of critical environmental concern.

(a) An Area of Critical Environmental Concern (ACEC) designation is the principal BLM designation for public lands where special management is required to protect important natural, cultural, and scenic resources, systems, or processes, or to protect life and safety from natural hazards. The BLM designates ACECs when issuing a decision to approve a Resource Management Plan, plan revision, or plan amendment. ACECs shall be managed to protect the relevant and important resources for which they are designated.

(b) In the land use planning process, authorized officers must identify, evaluate, and give priority to areas that have potential for designation and management as ACECs. Identification, evaluation, and priority management of ACECs shall be considered during the development and revision of Resource Management Plans and during amendments to Resource Management Plans when such action falls within the scope of the amendment (*see* §§ 1610.4–1 through 1610.4–9).

(c) The Field Manager must identify areas to evaluate for eligibility as ACECs early in the planning process, including by considering the following sources:

(1) The Field Manager must analyze inventory data to determine whether there are areas containing resources, values, systems, processes, or hazards eligible for designation as ACECs.

(2) The Field Manager must evaluate existing ACECs when plans are revised or when designations of ACECs are within the scope of an amendment, including considering potential changes to boundaries and management.

(3) The Field Manager must seek nominations for ACECs, during public scoping, from the public, State and local governments, Indian tribes, and other Federal agencies (see § 1610.2(c)) when developing new plans or revising existing plans, or when designations of ACECs are within the scope of a plan amendment. If nominations are received outside the planning process, interim management may be evaluated, considered, and implemented to protect relevant and important values until the BLM completes a planning process to determine whether to designate the area

as an ACEC, in conformance with the current Resource Management Plan.

(d) To be designated as an ACEC, an area must meet the following criteria:

(1) *Relevance.* The area contains resources with significant historic, cultural, or scenic value; a fish or wildlife resource; a natural system or process; or a natural hazard potentially impacting life and safety.

(2) *Importance.* The resources, values, systems, processes, or hazards have substantial importance, which generally requires that they have qualities of special worth, consequence, meaning, distinctiveness, or cause for concern. Authorized officers may consider the national or local importance, subsistence value, or regional contribution of a resource, value, system, or process. Resources, values, systems, or processes may have substantial importance if they contribute to ecosystem resilience, including by protecting intact landscapes and habitat connectivity. A natural hazard can be important if it is a significant threat to human life and safety.

(3) *Special Management Attention.* The resources, values, systems, processes, or hazards require special management attention. ''Special management attention'' means management prescriptions that:

(i) Conserve, protect, and restore relevant and important resources, values, systems, processes, or that protect life and safety from natural hazards; and

(ii) Would not be prescribed if the relevant resources, values, systems, processes, or hazards were not present.

(e) Resources, values, systems, processes, or hazards that are found to have relevance and importance are likely to require special management attention. In evaluating the need for special management attention, the Field Manager must consider:

(1) Whether highlighting the resources with the designation will protect or increase the vulnerability of the resources, and if so, how to tailor a designation to maximize protection and minimize unintended impacts;

(2) The values of other resource uses in the plan;

(3) The feasibility of managing the designation; and

(4) The relationship to other types of designations available.

(f) The Field Manager must identify the boundaries of proposed ACECs to encompass the relevant and important resources, values, systems, processes, or hazards, and any areas required for the special management attention needed to provide protection for the relevant and important resources, values, systems, processes, or hazards.

(g) Planning documents must include at least one alternative that analyzes in detail all proposed ACECs to provide for informed decisionmaking on the trade-offs associated with ACEC designation.

(h) The approved plan shall list all designated ACECs, identify their relevant and important resources, values, systems, processes, or hazards, and include the special management attention, including mitigating measures, identified for each designated ACEC.

(i) The State Director shall:

(1) Ensure that inventories used to obtain information and data on relevance and importance are kept current. Monitoring shall be performed and inventories shall be updated at intervals appropriate to the sensitivity of the relevant and important resources, values, systems, processes, or hazards, to ensure that data are available to identify trends and emerging issues during plan evaluations (see § 1610.4–9).

(2) Prioritize acquisition of inholdings within ACECs and adjacent or connecting lands identified as holding related relevant and important resources, values, systems, processes, or hazards as the designated ACEC.

(3) Provide annual reports within the first quarter of each fiscal year identifying for each designated ACEC within the State:

(i) Whether or not an activity plan is deemed necessary and, if so, whether it has been prepared;

(ii) Implementation actions accomplished during the previous fiscal year, highlighting those actions contributing to the conservation, enhancement, or protection of the resources, values, systems, or processes, or protection from natural hazards; and

(iii) Scheduled implementation measures for the ensuing fiscal year.

(j) The State Director, through the land use planning process, may remove the designation of an ACEC, in whole or in part, only when:

(1) The State Director finds that special management attention is not needed because another legally enforceable mechanism provides an equal or greater level of protection; or

(2) The State Director finds that the resources, values, systems, processes, or natural hazards of relevance and importance are no longer present, cannot be recovered, or have recovered to the point where special management is no longer necessary. The findings must be supported by data or documented changes on the ground.

■ 3. Add part 6100 to read as follows:

PART 6100—ECOSYSTEM RESILIENCE

Subpart 6101—General Information

Subpart 6102—Conservation Use to Achieve Ecosystem Resilience

Subpart 6103—Tools for Achieving Ecosystem Resilience

Authority: 16 U.S.C. 7202; 43 U.S.C. 1701 *et seq.*

Subpart 6101—General Information

§ 6101.1 Purpose.

The BLM's management of public lands on the basis of multiple use and sustained yield relies on healthy landscapes and resilient ecosystems. The purpose of this part is to promote the use of conservation to ensure ecosystem resilience. This part discusses the use of protection and restoration actions, as well as tools such as land health evaluations, inventory, assessment, and monitoring.

§ 6101.2 Objectives.

The objectives of these regulations are to:

(a) Achieve and maintain ecosystem resilience when administering Bureau programs; developing, amending, and revising land use plans; and approving uses on the public lands;

(b) Promote conservation by protecting and restoring ecosystem resilience and intact landscapes;

(c) Integrate the fundamentals of land health and related standards and guidelines into resource management;

(d) Incorporate inventory, assessment, and monitoring principles into decisionmaking and use this

information to identify trends and implement adaptive management strategies;

(e) Accelerate restoration and improvement of degraded public lands and waters to properly functioning and desired conditions; and

(f) Ensure that ecosystems and their components can absorb, or recover from, the effects of disturbances or environmental change through conservation, protection, restoration, or improvement of essential structures, functions, and redundancy of ecological patterns across the landscape.

§ 6101.3 Authority.

These regulations are issued under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) as amended; and section 2002 of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202).

§ 6101.4 Definitions.

As used in this part, the term:

Best management practices means state-of-the-art, efficient, appropriate, and practicable measures for avoiding, minimizing, rectifying, reducing, compensating for, or eliminating impacts over time.

Casual use means any short-term, noncommercial activity that does not cause appreciable damage or disturbance to the public lands or their resources or improvements and that is not prohibited by closure of the lands to such activities.

Conservation means maintaining resilient, functioning ecosystems by protecting or restoring natural habitats and ecological functions.

Disturbance means a discrete event in time that affects the structure and function of an ecosystem. Disturbances may be viewed as ''characteristic'' when ecosystems and species have evolved to accommodate the disturbance attributes or ''uncharacteristic'' when the attributes are outside an established range of variation.

Effects means the direct, indirect, and cumulative impacts from a public land use; effects and impacts as used in this rule are synonymous.

High-quality information means information that promotes reasoned, fact-based agency decisions. Information relied upon or disseminated by BLM must meet the standards for objectivity, utility, integrity, and quality set forth in applicable federal law and policy. Indigenous knowledge may qualify as high-quality information when that knowledge is authoritative, consensually obtained, and meets the standards for high-quality information.

Important, Scarce, or Sensitive resources:

(1) *Important resources* means resources that the BLM has determined to warrant special consideration, consistent with applicable law.

(2) *Scarce resources* means resources that are not plentiful or abundant and may include resources that are experiencing a downward trend in condition.

(3) *Sensitive resources* means resources that are delicate and vulnerable to adverse change, such as resources that lack resilience to changing circumstances.

Indigenous Knowledge (IK) means a body of observations, oral and written knowledge, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment. IK is applied to phenomena across biological, physical, social, cultural, and spiritual systems. IK can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. IK is developed by Indigenous Peoples including, but not limited to, Tribal Nations, American Indians, Alaska Natives, and Native Hawaiians.

Intact landscape means an unfragmented ecosystem that is free of local conditions that could permanently or significantly disrupt, impair, or degrade the landscape's structure or ecosystem resilience, and that is large enough to maintain native biological diversity, including viable populations of wide-ranging species. Intact landscapes have high conservation value, provide critical ecosystem functions, and support ecosystem resilience.

Land enhancement means any infrastructure or other use related to the public lands that is designed to improve production of forage; improve vegetative composition; direct patterns of use to improve ecological condition; provide water; stabilize soil and water conditions; promote effective wild horse and burro management; or restore, protect, and improve the condition of land health or fish and wildlife habitat. The term includes, but is not limited to, structures, treatment projects, and the use of mechanical devices or landscape modifications achieved through mechanical means.

Landscape means a network of contiguous or adjacent ecosystems characterized by a set of common management concerns or conditions. The landscape is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context. Areas described in terms of aquatic conditions, such as watersheds or ecoregions, may also be ''landscapes.''

Mitigation means:

(1) Avoiding the impacts of a proposed action by not taking a certain action or parts of an action;

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(3) Rectifying the impact of the action by repairing, rehabilitating, or restoring the affected environment;

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and

(5) Compensating for the impact of the action by replacing or providing substitute resources or environments. In practice, the mitigation sequence is often summarized as avoid, minimize, and compensate. The BLM generally applies mitigation hierarchically: first avoid, then minimize, and then compensate for any residual impacts from proposed actions.

Mitigation strategies means documents that identify, evaluate, and communicate potential mitigation needs and mitigation measures in a geographic area, at relevant scales, in advance of anticipated public land uses.

Monitoring means the periodic observation and orderly collection of data to evaluate:

(1) Existing conditions;

(2) The effects of management actions; or

(3) The effectiveness of actions taken to meet management objectives.

Permittee means any person that has a valid permit, right-of-way grant, lease, or other land use authorization from the BLM.

Protection is the act or process of conservation by preserving the existence of resources while keeping resources safe from degradation, damage, or destruction.

Public lands means any lands or interests in lands owned by the United States and administered by the Secretary of the Interior through the BLM without regard to how the United States acquired ownership.

Reclamation means, when used in relation to individual project goals and objectives, practices intended to achieve an outcome that reflects the final goal to restore the character and productivity of the land and water. Components of reclamation include, as applicable:

(1) Isolating, controlling, or removing of toxic or deleterious substances;

(2) Regrading and reshaping to conform with adjacent landforms, facilitate revegetation, control drainage, and minimize erosion;

(3) Rehabilitating fisheries or wildlife habitat;

(4) Placing growth medium and establishing self-sustaining revegetation;

(5) Removing or stabilizing buildings, structures, or other support facilities;

(6) Plugging drill holes and closing underground workings; and

(7) Providing for post-activity monitoring, maintenance, or treatment.

Resilient ecosystems means ecosystems that have the capacity to maintain and regain their fundamental structure, processes, and function when altered by environmental stressors such as drought, wildfire, nonnative invasive species, insects, and other disturbances.

Restoration means the process or act of conservation by assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed.

Sustained yield means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of BLM-managed lands without permanent impairment of the productivity of the land. Preventing permanent impairment means that renewable resources are not depleted, and that desired future conditions are met for future generations. Ecosystem resilience is essential to BLM's ability to manage for sustained yield.

Unnecessary or Undue degradation means harm to land resources or values that is not needed to accomplish a use's goals or is excessive or disproportionate.

§ 6101.5 Principles for ecosystem resilience.

Except where otherwise provided by law, public lands must be managed under the principles of multiple use and sustained yield.

(a) To ensure multiple use and sustained yield, the BLM's management must conserve the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; preserve and protect certain public lands in their natural condition (including ecological and environmental values); maintain the productivity of renewable natural resources in perpetuity; and consider the long-term needs of future generations, without permanent impairment of the productivity of the land.

(b) The BLM must conserve renewable natural resources at a level that maintains or improves future resource availability and ecosystem resilience.

(c) Authorized officers must implement the foregoing principles through:

(1) Conservation as a land use within the multiple use framework, including in decisionmaking, authorization, and planning processes;

(2) Protection and maintenance of the fundamentals of land health and ecosystem resilience;

(3) Restoration and protection of public lands to support ecosystem resilience;

(4) Use of the full mitigation hierarchy to address impacts to species, habitats, and ecosystems from land use authorizations; and

(5) Prevention of unnecessary or undue degradation.

Subpart 6102—Conservation Use to Achieve Ecosystem Resilience

§ 6102.1 Protection of intact landscapes.

(a) The BLM must manage certain landscapes to protect their intactness. This requires:

(1) Maintaining intact ecosystems through conservation actions.

(2) Managing lands strategically for compatible uses while conserving intact landscapes, especially where development or fragmentation is likely to occur that will permanently impair ecosystem resilience on public lands.

(3) Maintaining or restoring resilient ecosystems through habitat and ecosystem restoration projects that are implemented over broader spatial and longer temporal scales. (4) Coordinating and implementing actions across BLM programs, offices, and partners to protect intact landscapes.

(5) Pursuing management actions that maintain or mimic characteristic disturbance.

(b) Authorized officers will seek to prioritize actions that conserve and protect intact landscapes in accordance with § 6101.2.

§ 6102.2 Management to protect intact landscapes.

(a) When revising a Resource Management Plan under part 1600 of this chapter, authorized officers must use available data, including watershed condition classifications, to identify intact landscapes on public lands that will be protected from activities that would permanently or significantly disrupt, impair, or degrade the structure or functionality of intact landscapes.

(b) During the planning process, authorized officers must determine which, if any, tracts of public land will be put to conservation use. In making such determinations, authorized officers must consider whether:

(1) The BLM can establish partnerships to work across Federal and non-Federal lands to protect intact landscapes;

(2) Multiple lines of evidence indicate that active management will improve the resilience of the landscape through reducing the likelihood of uncharacteristic disturbance;

(3) The BLM can work with communities to identify geographic areas important for their strategic growth and development in order to allow for better identification of the most suitable areas to protect intact landscapes;

(4) The BLM can identify opportunities for co-stewardship with Tribes;

(5) Conservation leases (see § 6102.4) can be issued to manage and monitor areas within intact landscapes with high conservation value and complex, long-term management needs; and

(6) Standardized quantitative monitoring and best available information is used to track the success of ecological protection activities (see § 6103.3).

(c) When determining whether to acquire lands or interests in lands through purchase, donation, or exchange, authorized officers must prioritize the acquisition of lands or interests in lands that would further protect and connect intact landscapes and functioning ecosystems.

(d) Authorized officers must collect and track disturbance data that indicate the cumulative disturbance and direct loss of ecosystems at a watershed scale resulting from BLM-authorized activities. This information must be included in a national tracking system. The BLM must use the national tracking system to strategically minimize surface disturbance, including identifying areas appropriate for conservation and other uses in the context of threats identified in watershed condition assessments, to analyze landscape intactness and fragmentation of ecosystems, and to inform conservation actions.

§ 6102.3 Restoration.

(a) The BLM must emphasize restoration across the public lands to enable achievement of its multiple use and sustained yield mandate.

(b) In determining the restoration actions required to achieve recovery of ecosystems and promote resilience, the BLM must consider the degree of ecosystem degradation and develop restoration goals and objectives designed to achieve ecosystem resilience and land health standards (see § 6103.1–1).

(c) The BLM should employ active management to promote restoration. Over the long-term, restoration actions must be durable, self-sustaining, and expected to persist based on the resource objective.

§ 6102.3–1 Restoration prioritization.

(a) Not less than every five years, authorized officers must identify priority landscapes for restoration. In doing so, authorized officers must consider:

(1) Results from land health assessments, watershed condition classifications and other best available information (see subpart 6103 of this part);

(2) The likelihood of success of restoration activities to achieve resource or conservation objectives;

(3) The possibility of implementing a series of coordinated restoration actions benefiting multiple resources at scales commensurate to the cause of the degradation in areas where the BLM manages sufficient lands or partnerships exist to work across jurisdictions;

(4) Where restoration actions will have the greatest social, economic, and environmental justice impacts for local communities; and

(5) Where restoration can concurrently or proactively prevent unnecessary or undue degradation, such as ecosystem conversion, fragmentation, habitat loss, or other negative outcomes that permanently impair ecosystem resilience.

§ 6102.3–2 Restoration planning.

(a) Authorized officers must include a restoration plan in any Resource Management Plan adopted or revised in accordance with part 1600 of this chapter. Each restoration plan must include goals, objectives, and management actions that require:

(1) Measurable progress toward attainment of land health standards;

(2) Clear outcomes and monitoring to describe progress and enable adaptive management (see subpart 6103).

(3) Coordination and implementation of actions across BLM programs and with partners to develop landscape restoration objectives.

(4) Attainment of statewide and regional needs as identified in the assessment of priority landscapes for restoration and consistent with Resource Management Plan goals.

(5) Restoration of landscapes that land health assessments, watershed condition classifications and other best available information suggest should be prioritized for restoration.

(b) Authorized officers must design and implement restoration actions to achieve the goals and objectives adopted under paragraph (a) of this section. In doing so, authorized officers must:

(1) Ensure that actions are designed, implemented, and monitored at appropriate spatial and temporal scales using suitable treatments and tools to achieve desired outcomes.

(2) Ensure that restoration management actions address causes of degradation, focus on ecological process-based solutions, and where possible maintain attributes and resource values associated with the potential or capability of the ecosystem.

(3) Coordinate and implement actions across BLM programs and with partners to develop holistic restoration actions.

(4) Issue conservation leases under § 6102.4 for the purpose of restoring, managing, and monitoring areas within priority landscapes.

(5) Ensure incorporation of locally appropriate best management practices that address the following:

(i) A five-year schedule that describes activities prior to planning (such as pretreatments and native-plant materials procurement), implementation actions (including operation, maintenance, and repair), monitoring (see § 6103.2), and reporting;

(ii) Potential remedial and contingency measures that account for drought and changed circumstances that could delay implementation; and

(iii) Opportunities for compensatory mitigation for important, scarce, or sensitive resources or resources protected by law.

(c) Authorized officers must annually track restoration-project progress toward achieving goals, projects that have achieved project goals, and projects completed without meeting project goals. When assessment and monitoring efforts reveal that restoration outcomes have not been met, authorized officers must assess and track why restoration outcomes are not being achieved and what, if any, additional resources or changes to management are needed to achieve restoration goals.

(d) Authorized officers may authorize a restoration project or approve compensatory mitigation as part of a broader land use authorization only if the proposed restoration project or compensatory mitigation will be consistent with the land health standards, restoration goals and objectives, best management practices and Resource Management Plan restoration plans described in paragraph (a) of this section.

§ 6102.4 Conservation leasing.

(a) The BLM may authorize conservation use on the public lands by issuing conservation leases on such terms and conditions as the authorized officer determines are appropriate for the purpose of ensuring ecosystem resilience through protecting, managing, or restoring natural environments, cultural or historic resources, and ecological communities, including species and their habitats.

(1) Conservation leases on the public lands may be authorized for the following activities:

(i) Conservation use that involves restoration or land enhancement; and

(ii) Conservation use that involves mitigation.

(2) Authorized officers may issue conservation leases to any qualified individual, business, non-governmental organization, or Tribal government.

(3) Conservation leases shall be issued for a term consistent with the time required to achieve their objective.

(i) A conservation lease issued for purposes of restoration or protection may be issued for a maximum term of 10 years and shall be reviewed mid-term for consistency with the lease provisions.

(ii) A conservation lease issued for purposes of mitigation shall be issued for a term commensurate with the impact it is mitigating and reviewed every 5 years for consistency with the lease provisions.

(iii) Authorized officers shall extend or further extend a conservation lease if necessary to serve the purpose for which the lease was first issued. Such extension or further extension can be for a period no longer than the original term of the lease.

(4) Subject to valid existing rights and applicable law, once the BLM has issued a conservation lease, the BLM shall not authorize any other uses of the leased lands that are inconsistent with the authorized conservation use.

(5) No land use authorization is required under the regulations in this part for casual use of the public lands covered by a conservation lease.

(b) The process for issuing a conservation lease is as follows:

(1) An application for a conservation lease must be filed with the Bureau of Land Management office having jurisdiction over the public lands covered by the application. The filing of an application gives the applicant no right to use the public lands.

(2) If the lease application is approved, the authorized officer will issue an approved conservation lease on a form approved by the Office of the Director, Bureau of Land Management.

(c) An application for a conservation lease must include:

(1) A description of the proposed conservation use in sufficient detail to enable authorized officers to evaluate the feasibility of the proposed conservation use; the impacts, if any, on the environment; the public or other benefits from the conservation use; the approximate cost of the proposed conservation use; any threat to public health and safety posed by the proposed use; and how, in the opinion of the applicant, the proposed use conforms to the Bureau of Land Management's plans, programs, and policies for the public lands covered by the proposed use. The description shall include but not be limited to:

(i) Details of the proposed uses and activities;

(ii) A description of all facilities for which authorization is sought, including access needs and special types of leases that may be needed;

(iii) A map of sufficient scale to allow the required information to be legible as well as a legal description of primary and alternative project locations;

(iv) A schedule for restoration or land enhancement activities if applicable; and

(v) The following additional information, upon request of authorized officers:

(A) Additional studies or environmental data, if such studies or data are necessary for the BLM to decide whether to issue, issue with modification, or deny the proposed conservation lease.

(B) Documentation of or proof of application for additional private, State, local or other Federal agency licenses, permits, easements, certificates, or other approvals.

(C) Evidence that the applicant has, or prior to commencement of conservation activities will have, the technical and financial capability to operate, maintain, and terminate the authorized conservation use.

(2) The application shall include the name and legal mailing address of the applicant, as well as a statement of the applicant's interest in the resource or purpose of the lease.

(3) If the applicant is other than an individual, the application shall include the name and address of an agent authorized to receive notice of actions pertaining to the application.

(4) If any of the information required in this section has already been submitted as part of a separate conservation use proposal, the application need only refer to that proposal by filing date, office, and case number. The applicant shall certify that there have been no changes in any of the information.

(d) Approval of the application is not guaranteed and is solely at the discretion of the authorized officer.

(e) A conservation lease may only be assigned or transferred with the written approval of the authorized officer, and no assignment or transfer shall be effective until the BLM has approved it in writing. Authorized officers may authorize assignment or transfer of a conservation lease in their discretion if no additional rights will be conveyed beyond those granted by the original authorization, the proposed assignee or transferee is qualified to hold the lease, and the assignment or transfer is in the public interest.

(f) Administrative cost recovery, rents and fees for conservation leases will be governed by the provisions of §§ 2920.6 and 2920.8.

§ 6102.4–1 Termination and suspension of conservation leases.

(a) If a conservation lease provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon event, the conservation lease shall automatically terminate by operation of law upon the occurrence of such event.

(b) A conservation lease may be terminated by mutual written agreement between the authorized officer and the lessee to terminate the lease.

(c) Authorized officers have discretion to suspend or terminate conservation leases under the following circumstances:

(1) Improper issuance of the lease;

(2) Noncompliance by the holder with applicable law, regulations, or terms and conditions of the conservation lease;

(3) Failure of the holder to use the conservation lease for the purpose for which it was authorized; or

(4) Impossibility of fulfilling the purposes of the lease.

(d) Upon determination that the holder has failed to comply with any terms or conditions of a conservation lease and that such noncompliance adversely affects or poses a threat to land or public health or safety or impacts to ecosystem resilience, authorized officers shall issue an immediate temporary suspension.

(1) Authorized officers may issue an immediate temporary suspension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, authorized officers shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent. Authorized officers may also take such action considered necessary to address the adverse effects or threat to land or public health or safety or impacts to ecosystem resilience.

(2) Authorized officers may order immediate temporary suspension of an activity regardless of any action that has been or is being taken by another Federal or State agency.

(3) Any time after an order of temporary suspension has been issued, the holder may file with authorized officers a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request. Authorized officers may grant the request upon determination that the adverse effects or threat to land or public health or safety or impacts to ecosystem resilience are resolved.

(4) Authorized officers may render an order either to grant or to deny the request to resume within 5 working days of the date the request is filed. If authorized officers do not render an order on the request within 5 working days, the request shall be considered denied, and the holder shall have the same right to appeal as if an order denying the request had been issued.

(e) Process for termination or suspension other than temporary immediate suspension.

(1) Prior to commencing any proceeding to suspend or terminate a conservation lease, authorized officers shall give written notice to the holder of the legal grounds for such action and shall give the holder a reasonable time to address the legal basis the authorized officer identifies for suspension or termination.

(2) After due notice of termination or suspension to the holder of a conservation lease, if grounds for suspension or termination still exist after a reasonable time, authorized officers shall give written notice to the holder and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to part 4 of this chapter. The authorized officers shall suspend or revoke the conservation lease if the Administrative Law Judge determines that grounds for suspension or revocation exist and that such action is justified.

(3) Authorized officers shall terminate a suspension order when authorized officers determine that the grounds for such suspension no longer exist.

(4) Upon termination of a conservation lease, the holder shall, for 60 days after the notice of termination, retain authorization to use the associated public lands solely for the

purposes of reclaiming the site to its use conditions consistent with achieving land health fundamentals, unless otherwise agreed upon in writing or in the conservation lease terms. If the holder fails to reclaim the site consistent with the requirements of these regulations and the conservation lease terms within a reasonable period, all authorization to use the associated public lands will terminate, but that shall not relieve the holder of liability for the cost of reclaiming the site.

§ 6102.4–2 Bonding for conservation leases.

(a) *Bonding obligations.* (1) Prior to the commencement of surface-disturbing activities, the conservation lease holder shall submit a surety or a personal bond conditioned upon compliance with all the terms and conditions of the lease covered by the bond, as described in this subpart. The bond amounts shall be sufficient to ensure reclamation of the conservation lease area(s) and the restoration of any lands or surface waters adversely affected by conservation lease operations. Such restoration may be required after the abandonment or cessation of operations by the conservation lease holder in accordance with, but not limited to, the standards and requirements set forth by authorized officers.

(2) Surety bonds shall be issued by qualified surety companies certified by the Department of the Treasury.

(3) Personal bonds shall be accompanied by:

(i) Cashier's check;

(ii) Certified check; or

(iii) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a conservation use authorization.

(b) *State-wide bonds.* In lieu of bonds for each individual conservation lease, holders may furnish a bond covering all conservation leases and operations in any one State. Such a bond must be at least $25,000 and must be sufficient to ensure reclamation of all of the holder's conservation lease area(s) and the restoration of any lands or surface waters adversely affected by conservation lease operations in the State.

(c) *Filing.* All bonds shall be filed in the proper BLM office on a current form approved by the Office of the Director. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. Bonds shall be filed in the Bureau State office having jurisdiction of the conservation use easement covered by the bond.

(d) *Default.* (1) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a conservation lease, the face amount of the surety bond or personal bonds and the surety's liability thereunder shall be reduced by the amount of such payment.

(2) After default, where the obligation in default equals or is less than the face amount of the bond(s), the principal shall either post a new bond or restore the existing bond(s) to the amount previously held or a larger amount as determined by authorized officers. In lieu thereof, the principal may file separate or substitute bonds for each conservation use covered by the deficient bond(s). Where the obligation incurred exceeds the face amount of the bond(s), the principal shall make full payment to the United States for all obligations incurred that are in excess of the face amount of the bond(s) and shall post a new bond in the amount previously held or such larger amount as determined by authorized officers. The restoration of a bond or posting of a new bond shall be made within 6 months or less after receipt of notice from authorized officers.

(3) Failure to comply with these requirements may:

(i) Subject all leases covered by such bond(s) to termination under the provisions of this title;

(ii) Prevent the bond obligor or principal from acquiring any additional conservation lease or interest therein under this subpart; and

(iii) Result in the bond obligor or principal being referred to the Suspension and Debarment Program under 2 CFR part 1400 to determine if the entity will be suspended or debarred from doing business with the Federal Government.

§ 6102.5 Management actions for ecosystem resilience.

(a) Authorized officers must:

(1) Identify priority watersheds, landscapes, and ecosystems that require protection and restoration efforts;

(2) Develop and implement strategies, including mitigation strategies, and approaches that effectively manage public lands to protect resilient ecosystems;

(3) Develop and implement monitoring and adaptive management strategies for maintaining sustained yield of renewable resources, accounting for changing landscapes, fragmentation, invasive species, and other environmental disturbances (*see* § 6103.2);

(4) Report annually on the results of land health assessments, including in the land health section of the *Public Land Statistics;*

(5) Ensure consistency in watershed condition classifications both among neighboring BLM state offices and with the fundamentals of land health; and

(6) Store watershed condition classification data in a national database to determine changes in watershed condition and record measures of success based on conservation and restoration goals.

(b) In taking management actions, and as consistent with applicable law, authorized officers must:

(1) Consistent with the management of the area, avoid authorizing uses of the public lands that permanently impair ecosystem resilience;

(2) Promote opportunities to support conservation and other actions that work towards achieving sustained yield;

(3) Issue decisions that promote the ability of ecosystems to recover or the BLM's ability to restore function;

(4) Meaningfully consult with Indian Tribes and Alaska Native Corporations during the decisionmaking process on actions that may have a substantial direct effect on the Tribe or Corporation;

(5) Allow State, Tribal, and local agencies to serve as joint lead agencies consistent with 40 CFR 1501.7(b) or as cooperating agencies consistent with 40 CFR 1501.8(a) in the development of environmental impact statements or environmental assessments;

(6) Respect include Indigenous Knowledge, including by:

(i) Encouraging Tribes to suggest ways in which Indigenous Knowledge can be used to inform the development of alternatives, analysis of effects, and when necessary, identification of mitigation measures; and

(ii) Communicating to Tribes in a timely manner and in an appropriate format how their Indigenous Knowledge was included in decisionmaking, including addressing management of sensitive information;

(7) Develop and implement mitigation strategies that identify compensatory mitigation opportunities and encourage siting of large, market-based mitigation projects (*e.g.,* mitigation or conservation banks) on public lands where durability can be achieved;

(8) Consider a precautionary approach for resource use when the impact on ecosystem resilience is unknown or cannot be quantified; and

(9) Provide a justification for decisions that may impair ecosystem resilience.

(c) Authorized officers must use national, regional, and site-based assessment, inventory, and monitoring data as available and appropriate, along with other high-quality information, as multiple lines of evidence to evaluate resource conditions and inform decisionmaking, specifically by:

(1) Gathering high-quality available data relevant to the management decision, including standardized quantitative monitoring data and data about land health;

(2) Selecting relevant indicators for each applicable management question (*e.g.,* land health standards, restoration objectives, or intactness);

(3) Establishing a framework for translating indicator values to condition categories (such as quantitative-monitoring objectives or science-based conceptual models); and

(4) Summarizing results and ensuring that a clear and understandable rationale is documented, explaining how the data was used to make the decision.

§ 6102.5–1 Mitigation.

(a) The BLM will generally apply the mitigation hierarchy to avoid, minimize and compensate for, as appropriate, adverse impacts to resources when authorizing uses of public lands. As appropriate in a planning process, the authorized officer may identify specific mitigation approaches for identified uses or impacts to resources.

(b) Authorized officers shall, to the maximum extent possible, require mitigation to address adverse impacts to important, scarce, or sensitive resources.

(c) For compensatory mitigation, the BLM may use a third-party mitigation fund holder. Authorized officers may approve third-party mitigation fund holders to establish mitigation accounts for use by entities granted land use authorizations by the BLM, when such accounts are an appropriate and efficient method for implementing mitigation measures required through a BLM decision document. Approved mitigation fund holders are allowed to collect and manage mitigation funds collected from permittees and to expend the funds in accordance with agency decision documents and permits.

(d) Authorized officers may establish mitigation accounts as appropriate when multiple permittees have similar compensatory mitigation requirements or a single permittee has project impacts that require substantial compensatory mitigation that will be accomplished over an extended period and involve multiple mitigation sites.

(e) Authorized officers may approve the use of a mitigation account by a permittee only if a mitigation fund holder has a written agreement with the BLM as described in paragraph (h) of this section.

(f) Authorized officers may approve a third party as a mitigation fund holder if the party:

(1) Qualifies for tax-exempt status in accordance with Internal Revenue Code (IRC) section 501(c)(3);

(2) Has a history of successfully holding and managing mitigation, escrow, or similar corporate accounts;

(3) Is a public charity bureau for the state in which the mitigation area is located, or otherwise complies with applicable state laws;

(4) Is a third party organizationally separate from and having no corporate or family connection to the entity accomplishing the mitigation program or project, the project proponent, and the permittee;

(5) Adheres to generally accepted accounting practices that are promulgated by the Financial Account Standards Board, or any successor entity; and

(6) Has the capability to hold, invest, and manage the mitigation funds to the extent allowed by law and consistent with modern ''prudent investor'' and endowment law, such as the Uniform Prudent Management of Institutional Funds Act of 2006 (UPMIFA) or successor legislation when funds are needed for long-term management and monitoring. UPMIFA incorporates a general standard of prudent spending measured against the purpose of the fund and invites consideration of a wide array of other factors. For states that have not adopted UPMIFA, analogous state legislation can be relied upon to achieve this purpose.

(g) The BLM may not approve a state or local government agency to hold mitigation funds under paragraph (f) of this section unless the government agency is able to demonstrate, to the satisfaction of the BLM, that it is acting as a fiduciary for the benefit of the mitigation project or site and can show that it has the authority and ability to:

(1) Collect the funds;

(2) Protect the account from being used for purposes other than the management of the mitigation project or site;

(3) Disburse the funds to the entities conducting the mitigation project or management of the mitigation site;

(4) Demonstrate that it is organizationally separate from and has no corporate or family connection to the entity accomplishing the mitigation program or project, the project proponent, and the permittee; and

(5) Adhere to generally accepted accounting practices that are promulgated by the Governmental Accounting Standards Board or any successor entity.

(h) The BLM must execute an agreement with any approved mitigation fund holder. All mitigation fund holder agreements must be recorded with the BLM within 30 days of the agreement being fully executed. The BLM office originating the mitigation fund holder agreement must ensure that annual fiscal reports are accurate and complete.

Subpart 6103—Tools for Achieving Ecosystem Resilience

§ 6103.1 Fundamentals of land health.

(a) Standards and guidelines developed or revised by the BLM in a land use plan must be consistent with the following fundamentals of land health:

(1) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.

(2) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment to support healthy biotic populations and communities.

(3) Water quality complies with state water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives established in the land use plan such as meeting wildlife needs.

(4) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed and Candidate species, and other special status species.

(b) Authorized officers must manage all lands and program areas to achieve land health in accordance with the fundamentals of land health and standards and guidelines, as provided in this subpart.

§ 6103.1–1 Land health standards and guidelines.

(a) To ensure ecosystem resilience, authorized officers must implement

land health standards and guidelines that, at a minimum, conform to the fundamentals of land health across all lands and program areas.

(1) Authorized officers must apply existing land health standards and guidelines, including those previously established under subpart 4180 of this chapter, across all lands and program areas.

(2) Authorized officers must review land health standards and guidelines during the land use planning process and develop new or revise existing land health standards and guidelines as necessary for all lands and program areas to ensure the standards and guidelines serve as appropriate measures for the fundamentals of lands health.

(3) Authorized officers will periodically, but not less than every 5 years in conjunction with regular land use plan evaluations, review land health standards and guidelines for all lands and program areas to ensure they serve as appropriate measures for the fundamentals of land health. If existing standards and guidelines are found to be insufficient, authorized officers must evaluate whether to revise or amend the applicable land use plans.

(b) Authorized officers must determine the priority and scale for evaluating standards and guidelines based on resource concerns.

(c) Authorized officers must establish an appropriate set of goals, objectives, and success indicators to ensure that each land health standard can be measured against resource conditions. New and amended standards:

(1) May include previously identified indicators if they are applicable to the new or amended standard;

(2) Must incorporate appropriate quantitative indicators available from standardized datasets;

(3) Must address changing environmental conditions and physical, biological, and ecological functions not already covered by existing standards; and

(4) May require consultation with relevant experts within and outside the agency.

(d) The BLM may establish national indicators for all lands and program areas taken from existing indicators and the development of new indicators, as needed, in support of the implementation of the fundamentals of land health.

(1) Authorized officers must periodically review authorized uses for consistency with the fundamentals of land health for all lands and program areas.

(2) Reserved.

§ 6103.1–2 Land health assessments, evaluations, and determinations.

(a) Authorized officers must consider existing land health assessments, evaluations, and determinations in the course of decisionmaking processes regardless of program area. Authorized officers may prepare new land health assessments, evaluations, and determinations in connection with decisionmaking, and must do so if required by other law or regulation.

(b) In the course of conducting land health assessments, authorized officers must measure applicable indicators.

(c) In the course of conducting land health evaluations, authorized officers must:

(1) Document whether land health standards are achieved through land health assessments, documented observations, standardized quantitative data, or other data acceptable to authorized officers as described in § 6103.2.

(2) Use multiple lines of evidence. Indicator values can be compared to benchmark values to help evaluate land health standards. Attainment or nonattainment of a benchmark for one indicator can be considered as one line of evidence used in the assessment and evaluation.

(d) If resource conditions are determined to not be meeting, or making progress toward meeting, land health standards, authorized officers must determine the causal factors responsible for nonachievement.

(e) Authorized officers must make progress toward determining the causal factors for nonachievement as soon as practicable but not later than within a year of the land health assessment identifying the nonachievement.

(1) Upon determining that existing management practices or levels of use on public lands are significant factors in the nonachievement of the standards and guidelines, authorized officers must take appropriate action as soon as practicable.

(2) Taking appropriate action means implementing actions, consistent with applicable law and the terms and conditions of existing authorizations, that will result in significant progress toward fulfillment of the standards and significant progress toward compliance with the guidelines.

(3) Relevant practices and activities may include but are not limited to the establishment of terms and conditions for permits, leases, and other use authorizations and land enhancement activities.

(4) If authorized officers determine that existing management practices or levels of use on public lands are not significant causal factors in the nonachievement of the standards, other remediating actions should be identified and implemented as soon as practicable to address the identified causal factors.

(5) Authorized officers may authorize changes in management or development of a restoration plan to meet other objectives.

§ 6103.2 Inventory, assessment, and monitoring.

(a) Watershed condition classifications must be completed as part of all land use planning processes.

(b) The BLM will maintain an inventory of public lands. This inventory must include both critical landscape components (*e.g.,* land types, streams, habitats) and core indicators that address land health fundamentals. Authorized officers will use inventory, assessment, and monitoring information, including standardized quantitative monitoring data, remote sensing maps, and geospatial analyses, to inform decisionmaking across program areas, including but not limited to:

(1) Authorization of permitted uses;

(2) Land use planning;

(3) Land health evaluation;

(4) Available watershed assessments;

(5) Restoration planning, including prioritization;

(6) Assessments of restoration effectiveness;

(7) Evaluation and protection of intactness;

(8) Mitigation planning; and

(9) Other decisionmaking processes.

(c) Authorized officers must inventory, assess, and monitor activities employing the following principles:

(1) Structured implementation of monitoring activities through interdisciplinary monitoring plans, which guide monitoring program development, implementation, and data use for decision-makers;

(2) Standardized field measurements to allow data comparisons through space and time in support of multiple management decisions;

(3) Appropriate sample designs to minimize bias and maximize applicability of collected data;

(4) Data management and stewardship to ensure data quality, accessibility, and use; and

(5) Integration with remote sensing products to optimize sampling and calibrate continuous map products.

[FR Doc. 2023–06310 Filed 3–31–23; 8:45 am]

BILLING CODE 4331–27–P

Notices

Federal Register
Vol. 88, No. 63
Monday, April 3, 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–23–0012]

Opportunity for United States Grain Standards Act (USGSA) Designation in the Texas Central Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) is seeking persons or governmental agencies interested in providing official services in the area noted below to submit an application 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/or weighing services in a defined geographical area. In addition, AMS requests comments on the USGSA service need in this area. 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.

DATES: Applications for the Texas Central area and comments about the need for USGSA inspection and weighing services in this area must be received by May 3, 2023.

ADDRESSES: Submit applications and comments concerning this notice using any of 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 the Need for USGSA Services in the Texas Central Area:* Go to *Regulations.gov* (*https://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site. Interested persons are invited to submit written comments concerning this notice. 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: To view the applications, please contact *FGISQACD@usda.gov.* All comments will be available for public inspection online at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jacob Thein, Compliance Officer; Federal Grain Inspection Service, AMS, USDA; Telephone (816) 308–1351; Email: *FGISQACD@usda.gov.*

SUPPLEMENTARY INFORMATION: Sec. 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 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 export port locations. Under sec. 7(g) of the USGSA, designations of official agencies may be awarded for no longer than five years, unless terminated by the Secretary, and may be renewed according to the criteria and procedures prescribed in sec. 7(f) of the USGSA. See also 7 CFR 800.196 for further information and guidance.

Designation Application Locations

The following geographic area is open for application.

In Texas, the counties of: Anderson, Angelina, Atascosa, Austin, Bandera, Bastrop, Bell, Bexar, Blanco, Bosque, Brazos, Brewster, Brown, Burleson, Burnet, Caldwell, Camp, Cherokee, Coke, Coleman, Collin, Comal, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Culberson, Dallas, Delta, Denton, DeWitt, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Franklin, Freestone, Frio, Gillespie, Glasscock, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hamilton, Hardin, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hudspeth, Hunt, Irion, Jack, Jasper, Jeff Davis, Johnson, Karnes, Kaufman, Kendall, Kerr, Kimble, Kinney, Lamar, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Loving, McCulloch, McLennan, Madison, Marion, Mason, Maverick, Medina, Menard, Midland, Milam, Mills, Montague, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Palo Pinto, Panola, Parker, Pecos, Polk, Presidio, Rans, Reagan, Real, Red River, Reeves, Robertson, Rockwall, Runnels, Risk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Shelby, Smith, Somervell, Stephens, Sterling, Sutton, Tarrant, Terrell, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Williamson, Wilson, Winkler, Wise, Wood, Young, and Zavala.

Excludes any established or future export port locations which are serviced by FGIS.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic area noted above under the provisions of sec. 7(f) of the USGSA and 7 CFR 800.196. Applicants may apply for all or part of the Texas Central geographic area. The designation time frame for the Texas Central area will be determined as part of this application process provided that there is at least one qualified applicant. For more information on how to apply for

designation or to request more information about this geographic area, please 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 authority of FGIS through separate cooperative service agreements with AMS. The coverage area for cooperative service agreements generally aligns with the USGSA designation area. For further information, see 7 U.S.C. 1621 *et seq.* or contact *FGISQACD@usda.gov.*

Request for Comments

AMS is also publishing this notice to provide interested persons the opportunity to comment on the need for USGSA services in the Texas Central area as noted and any adjacent area service needs. All comments should be submitted through the Federal e-rulemaking portal at *https://www.regulations.gov.* In the event any applicants are deemed qualified, AMS may issue an additional notice requesting public comment about the applicant(s) and their ability to provide quality official services.

AMS considers applications, comments, and other available information when determining which applicants may be designated.

Authority: 7 U.S.C. 71–87k.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–06763 Filed 3–31–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Puerto Rico Advisory Committee to the Commission will convene by virtual web conference on Monday, April 17, 2023, at 3:30 p.m. Atlantic Time/Eastern Time. The purpose is to discuss their project on the civil rights impacts of the Insular Cases in Puerto Rico, especially in preparation of their in-person briefing in San Juan, Puerto Rico in May 2023.

DATES: April 17, 2023, Monday, from 3:30 p.m. to approximately 5:30 p.m. (AT/ET)

ADDRESSES: Meeting will be held via Zoom.

Registration Link (Audio/Visual): https://tinyurl.com/4v9jhyrb.

Join by Phone (Audio Only): 1–551–285–1373; Meeting ID: 160 919 5697#.

FOR FURTHER INFORMATION CONTACT: Email Victoria Moreno, Designated Federal Officer at *vmoreno@usccr.gov,* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting will be held in Spanish and is available to the public through the registration link above. English interpretation is available to anyone joining via the Zoom link above, but is not available if joining by phone only. If joining only by phone only, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf or hard of hearing. To request additional accommodations, please email *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

1. Welcome & Roll Call
2. Committee Discussion on Project Regarding the Civil Rights Impacts of the Insular Cases in Puerto Rico
3. Next Steps
4. Public Comment
5. Other Business
6. Adjourn

Dated: March 29, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–06843 Filed 3–31–23; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket Number: 230301–0059]

Differential Privacy Methodology for County Business Patterns Data

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice and request for comment.

SUMMARY: The U.S. Census Bureau (Census Bureau) has been working to implement modernized methods to continue to ensure the privacy protections of its information products and seeks public engagement and comment on these efforts. The Census Bureau is targeting the release the 2022 County Business Patterns (CBP) data using differential privacy methodology for disclosure avoidance. The Census Bureau has created demonstration tables and invites the public to participate in a live question-and-answer webinar on April 20, 2023, to learn more about how the differential privacy methodology is being applied to the CBP data. This Notice requests written comments on the demonstration tables and other issues related to this topic.

DATES: A live question-and-answer webinar will be held on Thursday, April 20, 2023, at 3 p.m. Eastern Daylight Time, for discussion of how the differential privacy methodology is applied to the CBP data. The webinar will be recorded.

Written comments must be submitted on or before June 2, 2023.

ADDRESSES: The webinar will be made available at *https://www.census.gov/data/academy/webinars/2023/differential-privacy-webinar.html* Demonstration tables are available at *https://www.census.gov/topics/business-economy/disclosure/data/tables.html.*

Please direct all written comments to Margaret Beckom, Dissemination Standards Branch, Economic Management Division, U.S. Census Bureau.

Email: margaret.m.beckom@census.gov with the subject CBP Disclosure Feedback.

Phone: 301–763–7522.

FOR FURTHER INFORMATION CONTACT: Margaret Beckom, Dissemination Standards Branch, Economic

Management Division, U.S. Census Bureau. Email: *margaret.m.beckom@census.gov;* Phone: 301–763–7522.

SUPPLEMENTARY INFORMATION:

County Business Patterns Program Background

The CBP is an annual series that provides subnational economic data by industry. This series includes estimates of the number of establishments, employment during the week of March 12, first quarter payroll, and annual payroll for subnational geographic areas. This data is useful for studying the economic activity of small areas; analyzing economic changes over time; and as a benchmark for other statistical series, surveys, and databases between economic censuses. Businesses use the data for analyzing market potential, measuring the effectiveness of sales and advertising programs, setting sales quotas, and developing budgets. Government agencies use the data for administration and planning.

Current Disclosure Avoidance Methodology

A noise infusion technique referred to as multiplicative noise has been the Census Bureau's disclosure avoidance methodology for CBP data since reference year 2007. This method of disclosure avoidance perturbs each establishment's data prior to table creation by applying a random noise multiplier to the magnitude data (*i.e.,* characteristics such as first-quarter payroll, annual payroll, and number of employees) for each establishment. Each published table's cell value has an associated noise flag indicating the relative amount of distortion in the cell value resulting from the perturbation of the data contributing to the cell. The flag for ''low noise'' (G) indicates the cell value was changed by less than 2 percent with the application of noise, the flag for ''moderate noise'' (H) indicates the value was changed by at least 2 percent but less than 5 percent, and the flag for ''high noise'' (J) indicates the value was changed 5 percent or more. Values for some cells in the table may be suppressed (denoted with an S) because of concerns about the quality of the data. Also, beginning with reference year 2017, a cell is only published if it is based on data from three or more establishments. In all other cases, the cell is not included in the release (*i.e.,* the corresponding table row is dropped from publication).

Differential Privacy Methodology

The proposed statistical disclosure limitation approach makes use of controlled, randomized noise added to published statistics to limit the extent to which public data users can make inferences about establishments in the internal, private CBP database. The approach includes two components: (1) Per-Record Differential Privacy, which gives a formal, mathematically provable privacy guarantee against exact inferences about establishments in the private database; and (2) non-differentially private, second-stage noise. Second-stage noise does not confer a formal privacy guarantee, but it ensures that large establishments present in published CBP statistics have a level of relative protection that increases as the number of establishments contributing to a published statistic decreases.

Demonstration Tables for New Differential Privacy Methodology for Disclosure Avoidance

The Census Bureau has created demonstration tables to illustrate how the new differential privacy methodology for disclosure avoidance can be applied to produce CBP estimates and will discuss this application during the April 20th webinar. These tables can be viewed at *https://www.census.gov/topics/business-economy/disclosure/data/tables.html.* The tables show estimates of the number of establishments, number of employees, first-quarter payroll, and annual payroll across geographic, industry, legal form of organization, and employment size levels. The input data for the demonstration tables are a set of synthetic microdata created solely from previously published CBP results. This approach ensures that existing disclosure avoidance safeguards are not compromised by the publication of the demonstration tables. The demonstration tables also include summary statistics of the uncertainty introduced by the new differential privacy methodology and comparison with the uncertainty introduced by the current disclosure avoidance methodology. We invite comments on these demonstration tables, including use cases (examples of how CBP data are used) and whether the new methodology affects these use cases (including whether the amount of noise shown in the demonstration tables would prevent or change any analyses for those use cases).

Robert L. Santos, Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: March 2, 2023.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2023–06774 Filed 3–31–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Travel, Tourism, and Outdoor Recreation Data Collection Instrument

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 2, 2023.

ADDRESSES: Interested persons are invited to submit written comments via email to Jacklyn Claxton, Management and Program Analyst, Economic Development Administration, Department of Commerce, at *jclaxton@eda.gov* or *PRAcomments@doc.gov*). Please reference Travel, Tourism, and Outdoor Recreation Data Collection Instrument in the subject line of your comments. 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 Jacklyn Claxton, Management and Program Analyst, Economic Development Administration, Department of Commerce, at *jclaxton@eda.gov* or 202–236–8372).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration (EDA) leads the Federal

economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Guided by the basic principle that sustainable economic development should be driven locally, EDA works directly with communities and regions to help them build the capacity for economic development based on local business conditions and needs. The Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. 3121 *et seq.*) is EDA's organic authority and is the primary legal authority under which EDA awards financial assistance. Under PWEDA, EDA provides financial assistance to both rural and urban distressed communities by fostering entrepreneurship, innovation, and productivity through investments in infrastructure development, workforce development, capacity building, and business development to attract private capital investments and new and better jobs to regions experiencing economic distress. Further information on EDA programs and financial assistance opportunities can be found at *www.eda.gov*.

To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. The purpose of this notice is to seek comments from the public and other Federal agencies on a request for a new information collection for recipients of awards under the EDA American Rescue Plan Act (ARPA) Travel, Tourism and Outdoor Recreation. This is aligned with ensuring that Federal travel, tourism and outdoor recreation investments are evidence-based and data-driven, and accountable to participants and the public.

The EDA research grantee will study the effectiveness of the ARPA Travel, Tourism and Outdoor Recreation Program, which aims to (1) expand the travel, tourism, and outdoor recreation economy; (2) create equitable opportunities for underserved populations; (3) build diversified local recreation economies that are resilient to future economic shocks and climate change; and (4) foster higher-skilled, higher wage job opportunities. To that end, EDA will conduct an electronic data collection survey of ARPA Travel, Tourism and Outdoor Recreation recipients. A subset of the recipients (30) will be engaged in phone interviews to narrow a selection of projects for the development of case studies.

EDA is particularly interested in public comment on how the proposed data collection will support the assessment of program effectiveness, or if alternative information should be considered.

II. Method of Collection

Data will be collected electronically and via phone interviews.

III. Data

OMB Control Number: New information collection.

Form Number(s): None: new information collection.

Type of Review: Regular submission: new information collection.

Affected Public: Recipients of ARPA Travel, Tourism and Outdoor Recreation awards, which may include (i) District Organization of an EDA-designated Economic Development District (EDD); (ii) Indian Tribe or a consortium of Indian Tribes; (iii) State, county, city, or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (iv) institution of higher education or a consortium of institutions of higher education; or (v) public or private non-profit organization or association acting in cooperation with officials of a general purpose political subdivision of a State.

Estimated Number of Respondents: A total of 332 respondents for the electronic survey and a subset of 30 for the phone interviews.

Estimated Time per Response: Two hours for the electronic survey and 0.75 hours for each phone interview.

Estimated Total Annual Burden Hours: 664 hours for the electronic survey and 22.5 hours for the phone interviews.

Estimated Total Annual Cost to Public: $42,590.46 (cost assumes application of U.S. Bureau of Labor Statistics third quarter 2022 mean hourly employer costs for employee compensation for professional and related occupations of $62.04).

Respondent's Obligation: Mandatory.

Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 et seq).

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 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 of Economic Affairs, Commerce Department.

[FR Doc. 2023–06800 Filed 3–31–23; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Report of Requests for Restrictive Trade Practice or Boycott

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 22, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

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

Title: Report of Requests for Restrictive Trade Practice or Boycott.

OMB Control Number: 0694–0012.
Form Number(s): None.
Type of Request: Extension of a current information collection.
Number of Respondents: 423.
Average Hours per Response: 1 to 1½ hours.
Burden Hours: 494.
Needs and Uses: This information is used to monitor requests for participation in foreign boycotts against countries friendly to the U.S. The information is analyzed to note changing trends and to decide upon appropriate action to be taken to carry out the United States' policy of discouraging United States persons from participating in foreign restrictive trade practices and boycotts directed against countries friendly to the United States.
Affected Public: Business or other for-profit organizations.
Frequency: On Occasion.
Respondent's Obligation: Voluntary.
Legal Authority: EAR Sections 764.5, and 764.7.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0694–0012.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–06803 Filed 3–31–23; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Foreign Availability Procedures

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 22, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Industry and Security, Department of Commerce.
Title: Foreign Availability Procedures.
OMB Control Number: 0694–0004.
Form Number(s): None.
Type of Request: Extension of a current information collection.
Number of Respondents: 2.
Average Hours per Response: 255.
Burden Hours: 510.
Needs and Uses: This information is collected in order to respond to requests by Congress and industry to make foreign availability determinations in accordance with Section 768 of the Export Administration Regulations. Exporters are urged to voluntarily submit data to support the contention that items controlled for export for national security reasons are available-in-fact, from a non-U.S. source, in sufficient quantity and of comparable quality so as to render the control ineffective.
Affected Public: Business or other for-profit organizations.
Frequency: On Occasion.
Respondent's Obligation: Voluntary.
Legal Authority: Section 1754(a)(6) of the Export Control Reform Act (ECRA).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0694–0004.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–06801 Filed 3–31–23; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Temporary Denial of Export Privileges; PJSC Aeroflot, 1 Arbat St., 119019, Moscow, Russia

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (''EAR'' or ''the Regulations''),[1] I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the temporary denial order (''TDO'') issued in this matter on October 3, 2022. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations.

I. Procedural History

On April 7, 2022, I signed an order denying PJSC Aeroflot's (''Aeroflot'') export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations and was effective upon issuance.[2] This temporary denial order was subsequently renewed in accordance with section 766.24(d) of the Regulations.[3] The renewal order issued on October 3, 2022 and was effective upon issuance.[4]

On March 7, 2023, BIS, through OEE, submitted a written request for renewal of the TDO that issued on October 3,

[1] On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. 2401 *et seq.* (''EAA''), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (''IEEPA''), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

[2] The TDO was published in the **Federal Register** on April 12, 2022 (87 FR 21611).

[3] Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order.

[4] The October 3, 2022 renewal order was published in the **Federal Register** on October 7, 2022 (87 FR 60985).

2022. The written request was made more than 20 days before the TDO's scheduled expiration. A copy of the renewal request was sent to Aeroflot in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. The TDO and BIS's Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation's (''Russia's'') further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (*e.g.,* Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (''ECCN'') 9A991 (section 746.8(a)(1) of the EAR).[5] BIS will review any export or reexport license applications for such items under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (''AVS'') (Section 740.15 of the EAR).[6] Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

This OEE request for renewal is based upon the facts underlying the issuance of the initial TDO and the renewal order subsequently issued in this matter on October 3, 2022, as well as other evidence developed during this investigation. These facts and evidence demonstrate that Aeroflot continues to act in blatant disregard for U.S. export controls and the applicable TDO. Specifically, the initial TDO, issued on April 7, 2022, was based on evidence that Aeroflot engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022 from destinations including, but not limited to, Beijing, China, Delhi, India, and Dubai, United Arab Emirates, without the required BIS authorization.[7] Further evidence submitted by BIS indicated that Aeroflot was continuing to operate aircraft subject to the EAR domestically on flights within Russia, potentially in violation of section 736.2(b)(10) of the Regulations.

As discussed in the October 3, 2022 renewal order, evidence presented by BIS indicated that, after the initial order issued, Aeroflot continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and within Russia, in violation of the Regulations and the TDO itself.[8] Specifically, the October 3, 2022 renewal order detailed Aeroflot's continued operation of aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Minsk, Belarus, Delhi, India, and Istanbul, Turkey, as well as within Russia.[9]

Since that time, Aeroflot has continued to engage in conduct prohibited by the applicable TDO and Regulations. In its March 7, 2023 request for renewal of the TDO, BIS submitted evidence that Aeroflot is operating aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and within Russia, in violation of the October 3, 2022 TDO and/or the Regulations. Specifically, BIS's evidence and related investigation demonstrates that Aeroflot has continued to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Yerevan, Armenia, Shanghai, China, Bangkok, Thailand, and Urgench, Uzebekistan, as well as domestically within Russia. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA–73126	41214	737–8LJ (B738)	Yerevan, AM/Moscow, RU	February 16, 2023.
RA–73126	41214	737–8LJ (B738)	Urgench, UZ/Moscow, RU	March 1, 2023.
RA–73126	41214	737–8LJ (B738)	Yerevan, AM/Moscow, RU	March 2, 2023.
RA–73126	41214	737–8LJ (B738)	Moscow, RU/Sochi, RU	March 2, 2023.
RA–73126	41214	737–8LJ (B738)	Fergana, UZ/Moscow, RU	March 5, 2023.

[5] 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (''CCL'') under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

[6] 87 FR 13048 (Mar. 8, 2022).

[7] Publicly available flight tracking information shows that on March 6, 2022, serial number (SN) 65309 flew from Beijing, China to Moscow, Russia, and SN 41690 flew from Dubai, UAE to Moscow, Russia. In addition, on March 7, 2022, SN 63511 flew from Delhi, India to Moscow, Russia.

[8] Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

[9] Publicly available flight tracking information shows that SN 41690 flew from Istanbul, Turkey to Moscow, Russia on September 20, 2022 and from Delhi, India to Moscow, Russia on September 23, 2022. In addition, on September 1, 2022, SN 41214 flew from Minsk, Belarus to Moscow, Russia. On September 13, 2022, SN 41214 flew from Moscow, Russia to Sochi, Russia.

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA–73126	41214	737–8LJ (B738)	Moscow, RU/Sochi, RU	March 6, 2023.
RA–73126	41214	737–8LJ (B738)	Yerevan, AM/Moscow, RU	March 21, 2023.
RA–73144	41690	777–3M0 (ER) (B77W)	Bangkok, TH/Moscow, RU	February 4, 2023.
RA–73144	41690	777–3M0 (ER) (B77W)	Moscow, RU/Vladivostok, RU	February 17, 2023.
RA–73144	41690	777–3M0 (ER) (B77W)	Male, MV/Moscow, RU	February 25, 2023.
RA–73144	41690	777–3M0 (ER) (B77W)	Moscow, RU/Sochi, RU	February 26, 2023.
RA–73144	41690	777–3M0 (ER) (B77W)	Delhi, IN/Moscow, RU	March 15, 2023.
RA–73144	41690	777–3M0 (ER) (B77W)	Shanghai, CN/Moscow, RU	March 19, 2023.
RA–73146	65309	777–300 (ER) (B77W)	Male, MV/Moscow, RU	February 12, 2023.
RA–73146	65309	777–300 (ER) (B77W)	Moscow, RU/Vladivostok, RU	February 19, 2023.
RA–73146	65309	777–300 (ER) (B77W)	Vladivostok, RU/Moscow, RU	February 20, 2023.
RA–73146	65309	777–300 (ER) (B77W)	Male, MV/Moscow, RU	February 24, 2023.
RA–73146	65309	777–300 (ER) (B77W)	Shanghai, CN/Moscow, RU	March 5, 2023.
RA–73146	65309	777–300 (ER) (B77W)	Moscow, RU/Vladivostok, RU	March 8, 2023.
RA–73146	65309	777–300 (ER) (B77W)	Vladivostok, RU/Moscow, RU	March 9, 2023.
RA–73146	65309	777–300 (ER) (B77W)	Bangkok, TH/Moscow, RU	March 16, 2023.
RA–73150	65307	777–3M0 (ER) (B77W)	Bangkok, TH/Moscow, RU	February 9, 2023.
RA–73150	65307	777–3M0 (ER) (B77W)	Sharm el-Sheikh, EG/Moscow, RU	February 10, 2023.
RA–73150	65307	777–3M0 (ER) (B77W)	Bangkok, TH/Moscow, RU	February 12, 2023.
RA–73150	65307	777–3M0 (ER) (B77W)	Sharm el-Sheikh, EG/Moscow, RU	February 15, 2023.
RA–73150	65307	777–3M0 (ER) (B77W)	Hurghada, EG/Moscow, RU	February 22, 2023.
RA–73150	65307	777–3M0 (ER) (B77W)	Sharm el-Sheikh, EG/Moscow, RU	March 1, 2023.
RA–73150	65307	777–3M0 (ER) (B77W)	Bangkok, TH/Moscow, RU	February 9, 2023.
RA–73150	65307	777–3M0 (ER) (B77W)	Sharm el-Sheikh, EG/Moscow, RU	March 11, 2023.

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Aeroflot has acted in violation of the Regulations and the TDO; that such violations have been significant and deliberate; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Aeroflot, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, PJSC Aeroflot, 1 Arbat St., 119019, Moscow, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of 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 EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Aeroflot any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Aeroflot of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Aeroflot acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Aeroflot of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from Aeroflot in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Aeroflot, or service any item, of whatever origin, that is owned, possessed or controlled by Aeroflot if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Aeroflot by

ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, Aeroflot may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Aeroflot as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Aeroflot, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–06835 Filed 3–31–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–059]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China: Final Results of Expedited First Sunset Review of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels as indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable April 3, 2023.

FOR FURTHER INFORMATION CONTACT: Matthew Palmer, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1678.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2023, Commerce published the notice of initiation of the first sunset review of the *Order,*[1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On January 18, 2023, ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, PTC Alliance Corp., Webco Industries, Inc., and Zekelman Industries, Inc. (collectively, domestic interested parties), timely notified Commerce of their intent to participate within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] On February 2, 2023, Commerce received a complete substantive response from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[4] Commerce received no substantive responses from respondent interested parties. Based on the notice of intent to participate and adequate response filed by the domestic interested parties, and the lack of response from any respondent interested party, Commerce conducted an expedited sunset review of the *Order,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Order

The scope of the *Order* covers cold-drawn mechanical tubing of carbon and alloy steel. For a complete description of the scope, *see* the Issues and Decision Memorandum.[5]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is provided in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of countervailable subsidies, the magnitude of the countervailable subsidies likely to prevail if the *Order* were revoked, and the nature of the subsidies. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of the 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 a continuation or recurrence of countervailable subsidies at the following rates:

Producer/exporter	Net countervailable subsidy rate (percent)
Jiangsu Hongyi Steel Pipe Co., Ltd	21.41
Zhangjiagang Huacheng Import & Export Co., Ltd	18.27
All-Others	19.84

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China and India: Countervailing Duty Orders,* 83 FR 4637 (February 1, 2018) (*Order*).

[2] *See Initiation of Five-Year* (*Sunset*) *Reviews,* 88 FR 63 (January 3, 2023).

[3] *See* Domestic Interested Parties' Letter, ''Domestic Interested Parties' Notice of Intent to Participate,'' dated January 18, 2023.

[4] *See* Domestic Interested Parties' Letter, ''Domestic Interested Parties' Substantive Response,'' dated February 2, 2023 (Substantive Response).

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China,'' dated concurrently with this notice (Issues and Decision Memorandum).

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely 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 these final results and this 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

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–06793 Filed 3–31–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–858]

Certain Softwood Lumber Products From Canada: Final Results of the Expedited Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain softwood lumber products (softwood lumber) from Canada 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 April 3, 2023.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Laura Griffith, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4793 and (202) 482–6430, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2018, Commerce published the *Order* on softwood lumber from Canada.[1] On December 1, 2022, Commerce published the notice of initiation of the first sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On December 5 and 16, 2022, Commerce received notices of intent to participate in this review from the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (COALITION) and Sierra Pacific Industries, including its subsidiary Seneca Sawmill Company (Sierra Pacific), respectively, within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] The COALITION, the petitioner in the underlying investigation, claims that it has interested party status within the meaning of 19 CFR 351.102(b)(29)(viii), as an association, the majority of whose members are interested parties described in subparagraphs (C), (D), or (E) of section 771(9) of the Act with respect to a domestic like product.[4] Sierra Pacific claims interested party status within the meaning of section 771(9)(C) of the Act and 19 CFR 351.102(b)(29)(v) as a U.S. producer of the domestic like product.[5]

On December 30, 2022, and January 3, 2023, Commerce received adequate substantive responses from the COALITION and Sierra Pacific, respectively, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[6] Commerce did not receive a substantive response from either the Government of Canada or any other respondent interested party to this proceeding. On January 25, 2023, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[7] As a result, Commerce conducted an expedited (120-day) sunset review of the *Order,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Scope of the Order

The merchandise covered by this *Order* is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products). For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[8]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of subsidization in the event of revocation of the *Order* and the countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is provided in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which 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) and 752(b) of the Act, we determine that revocation

[1] *See Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 347 (January 3, 2018) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 73757 (December 1, 2022).

[3] *See* COALITION's Letter, ''Five-Year (Sunset) Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Notice of Intent to Participate,'' dated December 5, 2022 (COALITON's Notice of Intent); *see also* Sierra Pacific's Letter, ''Certain Softwood Lumber Products from Canada: Notice of Intent to Participate in Sunset Review,'' dated December 16, 2022 (Sierra Pacific's Notice of Intent).

[4] *See* COALITION's Notice of Intent at 2–4.

[5] *See* Sierra Pacific's Notice of Intent at 2.

[6] *See* COALITION's Letter, ''Five-Year (Sunset) Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Substantive Response to Notice of Initiation,'' dated December 30, 2022; *see also* Sierra Pacific's Letter, ''Certain Softwood Lumber Products from Canada: Substantive Response to the Notice of Initiation,'' dated January 3, 2023.

[7] *See* Commerce's Letter, ''Sunset Reviews Initiated December 1, 2022,'' dated January 25, 2023.

[8] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

Producers/exporters	Net countervailable subsidy rate (percent) ad valorem
Canfor Corporation and its cross-owned affiliates [9]	13.96
J.D. Irving, Limited and its cross-owned affiliates [10]	3.58
Resolute FP Canada Inc. and its cross-owned affiliates [11]	19.19
Tolko Marketing and Sales Ltd. and its cross-owned affiliates [12]	20.28
West Fraser Mills Ltd. and its cross-owned affiliates [13]	18.68
All-Others Rate	19.62

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing these final results and this 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.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–06791 Filed 3–31–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) received scope ruling applications, requesting that scope inquiries be conducted to determine whether identified products are covered by the scope of antidumping duty (AD) and/or countervailing duty (CVD) orders and that Commerce issue scope rulings pursuant to those inquiries. In accordance with Commerce's regulations, we are notifying the public of the filing of the scope ruling applications listed below in the month of February 2023.

DATES: Applicable April 3, 2023.

FOR FURTHER INFORMATION CONTACT: Terri Monroe, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–1384.

SUPPLEMENTARY INFORMATION:

Notice of Scope Ruling Applications

In accordance with 19 CFR 351.225(d)(3), we are notifying the public of the following scope ruling applications related to AD and CVD orders and findings filed in or around the month of February 2023. This notification includes, for each scope application: (1) identification of the AD and/or CVD orders at issue (19 CFR 351.225(c)(1)); (2) concise public descriptions of the products at issue, including the physical characteristics (including chemical, dimensional and technical characteristics) of the products (19 CFR 351.225(c)(2)(ii)); (3) the countries where the products are produced and the countries from where the products are exported (19 CFR 351.225(c)(2)(i)(B)); (4) the full names of the applicants; and (5) the dates that the scope applications were filed with Commerce and the name of the ACCESS scope segment where the scope applications can be found.[1] This notice does not include applications which have been rejected and not properly resubmitted. The scope ruling applications listed below are available on Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), at *https://access.trade.gov.*

Scope Ruling Applications

Wooden Bedroom Furniture from the People's Republic of China (China) (A–570–890); various models of wooden

[9] Commerce found the following companies to be cross-owned with Canfor: Canadian Forest Products., Ltd. and Canfor Wood Products Marketing, Ltd.

[10] Commerce found the following companies to be cross-owned with JDIL: Miramichi Timber Holdings Limited, The New Brunswick Railway Company, Rothesay Paper Holdings Ltd., St. George Pulp & Paper Limited, and Irving Paper Limited.

[11] Commerce found the following companies to be cross-owned with Resolute: Resolute Growth Canada Inc., Resolute Sales Inc., Abitibi-Bowater Canada Inc., Bowater Canadian Ltd., Resolute Forest Products Inc., Produits Forestiers Maurice SEC., and 9192–8515 Quebec Inc.

[12] Commerce found the following companies to be cross-owned with Tolko: Tolko Industries Ltd., and Meadow Lake OSB Limited Partnership.

[13] Commerce found the following companies to be cross-owned with West Fraser: Blue Ridge Lumber Inc., Manning Forest Products, Ltd., Sundre Forest Products Inc., Sunpine Inc., West Fraser Alberta Holdings, Ltd., and West Fraser Timber Co., Ltd.

[1] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300, 52316 (September 20, 2021) (*Final Rule*) (''It is our expectation that the **Federal Register** list will include, where appropriate, for each scope application the following data: (1) identification of the AD and/or CVD orders at issue; (2) a concise public summary of the product's description, including the physical characteristics (including chemical, dimensional and technical characteristics) of the product; (3) the country(ies) where the product is produced and the country from where the product is exported; (4) the full name of the applicant; and (5) the date that the scope application was filed with Commerce.'')

bathroom cabinets; [2] produced in and exported from China; submitted by Teamson, US, Inc.; February 3, 2023; ACCESS scope segment ''Teamson Bathroom Furniture.''

Aluminum Wire and Cable from China (A–570–095/C–570–096); aluminum conductor cable manufactured with Chinese-origin aluminum wire; [3] produced in and exported from Korea; submitted by Imperium Cables LLC; February 8, 2023; ACCESS scope segment ''Imperium Cables, LLC.''

Chassis and Subassemblies from China (A–570–135/C–570–136); finished chassis from Vietnam with Chinese components; [4] produced in and exported from Vietnam; submitted by Pitts Enterprises, Inc. dba Dorsey Intermodal; February 13, 2023; ACCESS scope segment ''Pitts Axle and Landing Gear Components.''

Wooden Bedroom Furniture from China (A–570–890); steel-framed platform beds containing decorative wood panels in either the headboard, footboard, or both; produced in and exported from China; [5] submitted by Zinus, Inc.; February 15, 2023; ACCESS scope segment ''Zinus Metal & Wood Platform Beds.''

Wooden Cabinets and Vanities and Components Thereof from China (A–570–106/C–570–107); Cabinets and Vanities made from Phragmites; [6] produced in and exported from China; submitted by Nanjing Kaylang Co., Ltd.; February 23, 2023; ACCESS scope segment ''Kaylang Phragmites.''

Alloy and Certain Carbon Steel Threaded Rod from China (A–570–932); carbon steel wedge anchors; [7] produced in and exported from China; submitted by Chun Yu Works USA Inc.; February 24, 2023; ACCESS scope segment ''Chun Yu Works-Carbon Steel Wedge Anchors.''

Alloy and Certain Carbon Steel Threaded Rod from China (A–570–104); carbon steel hex nut sleeve anchors; [8] produced in and exported from China; submitted by Chun Yu Works; February 27, 2023; ACCESS scope segment ''Chun Yu Works-Hex Nut Sleeve Anchors.''

Alloy and Certain Carbon Steel Threaded Rod from China (C–570–105); carbon steel hex nut sleeve anchors; [9] produced in and exported from China; submitted by Chun Yu Works; February 27, 2023; ACCESS scope segment ''Chun Yu Works-Hex Nut Sleeve Anchors.''

Alloy and Certain Steel Threaded Rod from China (A–570–932); carbon steel hex nut sleeve anchors; [10] produced in and exported from China; submitted by Chun Yu Works; February 28, 2023; ACCESS scope segment ''Chun Yu Works-Hex Nut Sleeve Anchors.''

Notification to Interested Parties

This list of scope ruling applications is not an identification of scope inquiries that have been initiated. In accordance with 19 CFR 351.225(d)(1), if Commerce has not rejected a scope ruling application nor initiated the scope inquiry within 30 days after the filing of the application, the application will be deemed accepted and a scope inquiry will be deemed initiated the following day—day 31.[11] Commerce's practice generally dictates that where a deadline falls on a weekend, Federal holiday, or other non-business day, the appropriate deadline is the next business day.[12] Accordingly, if the 30th day after the filing of the application falls on a non-business day, the next business day will be considered the ''updated'' 30th day, and if the application is not rejected or a scope inquiry initiated by or on that particular business day, the application will be deemed accepted and a scope inquiry will be deemed initiated on the next business day which follows the ''updated'' 30th day.[13]

In accordance with 19 CFR 351.225(m)(2), if there are companion AD and CVD orders covering the same merchandise from the same country of origin, the scope inquiry will be conducted on the record of the AD proceeding. Further, please note that pursuant to 19 CFR 351.225(m)(1), Commerce may either apply a scope ruling to all products from the same country with the same relevant physical characteristics, (including chemical, dimensional, and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter, or importer of those products, or on a company-specific basis.

For further information on procedures for filing information with Commerce through ACCESS and participating in scope inquiries, please refer to the Filing Instructions section of the Scope Ruling Application Guide, at *https://access.trade.gov/help/Scope_Ruling_Guidance.pdf.* Interested parties, apart from the scope ruling applicant, who wish to participate in a scope inquiry and be added to the public service list for that segment of the proceeding must file an entry of appearance in

[2] The products are five models of floor standing wooden bathroom cabinets, all of which feature double-doors with two shelves. The models' exterior dimensions range from 24-inches to 27-inches in length, 12.5-inches to 16-inches in width, and 32-inches to 62.25-inches in height.

[3] The products are Type SE Style (R) with lugs and terminations and Type URD 600 Volt Secondary UD Cable with/without lugs and terminations. Both types are made with stranded aluminum wire insulated with a layer of thermoplastic compound from an extruded polyethylene.

[4] The products are Vietnamese chassis with Chinese components, specifically, axles and landing gear legs. The chassis' rectangular frame is made of steel with a suspension system and axle system, wheels and tires, brakes, a lighting and electrical system, a coupling for towing behind a truck tractor, and a locking system or systems to secure shipping containers attached to the chassis. Chassis are designed to carry containers of various sizes, usually 20′, 40′, 45′ or 53′.

[5] The products are steel-framed platform beds with structural components (the frames and legs) made of metal and either metal or wooden mattress support slats. The request pertains to seven platform bed products, each of which comes in various sizes (twin, full, queen, king).

[6] The products are cabinets and vanities made from phragmites, a wetland grass reed.

[7] The products are wedge anchors, which consist of (1) a cone-headed bolt that is threaded along the majority of the shaft length, with a lip to secure the expansion clip in place; (2) an expansion clip that is permanently affixed to the bolt between the conical head and the lip; (3) a hex nut; and (4) a washer. All components are made of zinc-coated carbon steel. The bolt portion of the wedge anchors is made of Q215 steel. The wedge anchors have a nominal length of 1¾-inches to 12 inches, and a nominal diameter of ¼-inches to 1 inch.

[8] The products are hex nut sleeve anchors, which consist of (1) a cone-headed bolt that is threaded along the majority of the shaft length; (2) an expansion sleeve; (3) a hex nut; and (4) a washer. All components are made of zinc-coated carbon steel. The bolt portion of the sleeve anchors is made of Q215 steel. The sleeve anchors have a nominal length of 1½-inches to 6¼-inches, and a nominal diameter of 5/16-inches to ¾-inches.

[9] The products that are the subject of this scope application are hex nut sleeve anchors, which consist of (1) a cone-headed bolt that is threaded along the majority of the shaft length; (2) an expansion sleeve; (3) a hex nut; and (4) a washer. All components are made of zinc-coated carbon steel. The bolt portion of the sleeve anchors is made of Q215 steel. The sleeve anchors have a nominal length of 1½-inches to 6¼-inches, and a nominal diameter of 5/16 inches to ¾-inches.

[10] The products that are the subject of this scope application are hex nut sleeve anchors, which consist of (1) a cone-headed bolt that is threaded along the majority of the shaft length; (2) an expansion sleeve; (3) a hex nut; and (4) a washer. All components are made of zinc-coated carbon steel. The bolt portion of the sleeve anchors is made of Q215 steel. The sleeve anchors have a nominal length of 1½ inches to 6¼-inches, and a nominal diameter of 5/16-inches to ¾-inches.

[11] In accordance with 19 CFR 351.225(d)(2), within 30 days after the filing of a scope ruling application, if Commerce determines that it intends to address the scope issue raised in the application in another segment of the proceeding (such as a circumvention inquiry under 19 CFR 351.226 or a covered merchandise inquiry under 19 CFR 351.227), it will notify the applicant that it will not initiate a scope inquiry, but will instead determine if the product is covered by the scope at issue in that alternative segment.

[12] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[13] This structure maintains the intent of the applicable regulation, 19 CFR 351.225(d)(1), to allow day 30 and day 31 to be separate business days.

accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.225(n)(4). Interested parties are advised to refer to the case segment in ACCESS as well as 19 CFR 351.225(f) for further information on the scope inquiry procedures, including the timelines for the submission of comments.

Please note that this notice of scope ruling applications filed in AD and CVD proceedings may be published before any potential initiation, or after the initiation, of a given scope inquiry based on a scope ruling application identified in this notice. Therefore, please refer to the case segment on ACCESS to determine whether a scope ruling application has been accepted or rejected and whether a scope inquiry has been initiated.

Interested parties who wish to be served scope ruling applications for a particular AD or CVD order may file a request to be included on the annual inquiry service list during the anniversary month of the publication of the AD or CVD order in accordance with 19 CFR 351.225(n) and Commerce's procedures.[14]

Interested parties are invited to comment on the completeness of this monthly list of scope ruling applications received by Commerce. Any comments should be submitted to James Maeder, Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to *CommerceCLU@trade.gov.*

This notice of scope ruling applications filed in AD and CVD proceedings is published in accordance with 19 CFR 351.225(d)(3).

Dated: March 28, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–06792 Filed 3–31–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable April 3, 2023.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–570–055	731–TA–1359 ...	China	Carton Closing Staples (1st Review)	Mary Kolberg (202) 482–1785.
A–570–862	731–TA–891	China	Foundry Coke (4th Review)	Thomas Martin (202) 482–3936.
A–583–849	731–TA–1197 ...	Taiwan ...	Steel Wire Garment Hangers (2nd Review)	Thomas Martin (202) 482–3936.
A–552–812	731–TA–1198 ...	Vietnam ..	Steel Wire Garment Hangers (2nd Review)	Thomas Martin (202) 482–3936.
C–552–813	701–TA–487	Vietnam ..	Steel Wire Garment Hangers (2nd Review)	Mary Kolberg (202) 482–1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry

[14] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021).

of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: March 9, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–06902 Filed 3–31–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[2] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC785]

Marine Mammals; File No. 27057

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

ACTION: Notice; receipt of application.

SUMMARY: Howard Rosenbaum, Ph.D., Wildlife Conservation Society, 2300 Southern Blvd., Bronx, New York 10460, has applied in due form for a permit to conduct research on 14 species of cetaceans within the New York Bight.

DATES: Written, telefaxed, or email comments must be received on or before May 3, 2023.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 27057 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 27057 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Courtney Smith, Ph.D., or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222 through 226).

The applicant requests a 5-year permit to conduct scientific research on marine mammals to: (1) monitor occurrence, distribution, and behavior using photo-ID data, genetic data, behavioral data, and non-invasive suction cup tagging; and (2) determine sex, population structure, and analyze stable isotopes using remote biopsy samples. Research activities will take place in the New York Bight (NYB), spanning from Montauk, New York to Cape May, New Jersey and from the shore to the continental shelf. Fieldwork will involve vessel surveys, biopsy sampling, photo-ID, seawater collection for eDNA analysis, targeted non-invasive suction cup tagging, and the collection of photos and videos. Biopsy samples may be exported for genetic analysis.

Up to 500 annual takes of the following species are requested: blue (*Balaenoptera musculus*), Cuvier's beaked (*Ziphiidae cavirostris*); fin (*B. physalus*), minke (*B. acutorostrata*), humpback (*Megaptera novaeangliae*), North Atlantic right (*Eubalaena glacialis;* photo-ID and behavioral observations only), sei (*B. borealis*), short-finned pilot whale (*Globicephala macrorhynchus*), and sperm (*Physeter macrocephalus*) whales; Atlantic white-sided (*Lagenorhynchus acutus*), bottlenose (*Tursiops truncatus*), short-beaked common (*Delphinus delphis*), and Risso's (*Grampus griseus*) dolphins; and harbor porpoise (*Phocoena phocoena*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 28, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–06787 Filed 3–31–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Web-Based Frequency Coordination System (70–80–90 GHz)

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, following the Paperwork Reduction Act of 1995 (PRA), invites the 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. This Notice of Information Collection is for the Web-Based Frequency Coordination System (70–80–90 GHz) which the National Telecommunications and Information Administration (NTIA) provides for frequency coordination. The purpose of this notice is to allow for 60 days of public comment preceding the submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 2, 2023.

ADDRESSES: Interested persons are invited to submit written comments by mail to Edward Drocella, Chief, Spectrum Engineering and Analysis Division, Office of Spectrum Management, National Telecommunication and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, or by email to *edrocella@ntia.gov.* Please reference Web-Based Frequency Coordination System in the subject line of your comments. 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 Edward Drocella, Chief, Spectrum Engineering and Analysis Division, via email at *edrocella@ntia.gov* or via telephone at (202) 482–2608.

SUPPLEMENTARY INFORMATION:

I. Abstract

NTIA serves as the President's principal advisor on telecommunications policies and manages the use of the radio-frequency spectrum by federal agencies. *See* 47 U.S.C. 902(b)(2). NTIA developed an internet web-based system that collects specific identification information from applicants seeking to operate in the 70–80–90 GHz bands that are shared on a co-primary basis among federal and non-federal users. The web-based system provides a means for non-federal applicants to rapidly determine the availability of radio frequency (RF) spectrum or the need for detailed frequency coordination. The website allows the non-federal applicant's proposed radio site information to be analyzed, and a real-time determination to be made as to whether there is a potential for interference to, or from, existing federal government radio operations in the vicinity of the proposed site. The system also helps expedite the coordination process for non-federal applicants while assuring protection of government data relating to national security. The information provided by non-federal applicants also ensures the protection of the applicant's station from RF interference from future government operations.

II. Method of Collection

NTIA collects the data by means of an internet web-based system. The applications on the website provide real-time responses to obtain either: (1) a validation of the coordination of a single frequency, or (2) a notification of the unavailability of a frequency at the one site and that further coordination will be required. Applicants submit information electronically to the website *http://freqcoord.ntia.doc.gov/terms.aspx.*

III. Data

OMB Control Number: 0660–0018.

Form Number(s): None.

Type of Review: Regular submission: extension of currently approved information collection.

Affected Public: Applicants seeking to operate in the 70–80–90 GHz bands.

Estimated Number of Respondents: 6,551.

Estimated Time per Response: 0.25 of an hour.

Estimated Total Annual Burden Hours: 1,638.

Estimated Total Annual Cost to Public: $50,123.

Respondent's Obligation: Voluntary.

Legal Authority: 47 U.S.C. 902(b)(2).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary and proper for the Department to carry its functions, 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 for approval. 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. 2023–06802 Filed 3–31–23; 8:45 am]

BILLING CODE 3510–60–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, April 5, 2023–10:00 a.m.

PLACE: The meeting will be held remotely, and in person at 4330 East West Highway, Bethesda, Maryland 20814.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: *Decisional Matter:* Supplemental Notice of Proposed Rulemaking: Safety Standard for Portable Generators. To attend virtually, please follow instructions found at the link below. *https://cpscevents.webex.com/weblink/register/r766627cdc0abd06cc6aaf5e814ce81bf.*

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: March 29, 2023.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2023–06915 Filed 3–30–23; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–11]

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 a section 36(b)(1) 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 20–11 with attached Policy Justification and Sensitivity of Technology.

Dated: March 29, 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

NOV 0 4 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. 20-11 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost $650 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. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 20–11

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 * ..	$620 million
Other	$ 30 million
TOTAL	$650 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Two Hundred Eighty (280) AIM–120C–7/C–8 Advanced Medium Range Air-to-Air Missiles (AMRAAM)

Five Hundred Ninety-six (596) LAU–128 Missile Rail Launchers (MRL)

Non-MDE:

Also included are containers; weapon support and support equipment; spare and repair parts; U.S. Government and contractor engineering, technical and logistical

support services; and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (SR–D–YAG)

(v) *Prior Related Cases, if any:* SR–D–YAS

(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:* November 4, 2021

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia—AIM–120C Advanced Medium Range Air-to-Air Missiles (AMRAAM)

The Kingdom of Saudi Arabia has requested to buy two hundred eighty (280) AIM–120C–7/C–8 Advanced Medium Range Air-to-Air Missiles (AMRAAM) and five hundred ninety-six (596) LAU–128 Missile Rail Launchers (MRL). Also included are containers; weapon support and support equipment; spare and repair parts; U.S. Government and contractor engineering, technical and logistical support services; and other related elements of logistical and program support. The total estimated cost is $650 million.

This proposed sale will support U.S. foreign policy and national security of the United States by helping to improve the security of a friendly country that continues to be an important force for political and economic progress in the Middle East.

The proposed sale will improve Saudi Arabia's capability to meet current and future threats by increasing its stocks of medium-range missiles for its fighter aircraft fleet for its national defense. This potential sale will support Saudi Arabia's Eurofighter Typhoon, F–15C/D, F–15S, and F–I5SA programs and will further strengthen the interoperability between the United States and Saudi Arabia. Saudi Arabia will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon, Waltham, MA. There are no known offset agreements in connection with this potential sale; however the purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20–11

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 AIM–120C–7/C–8 AMRAAM is a supersonic, air launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high and low-flying and maneuvering targets. The AIM–120C–8 is a form, fit, function refresh of the AIM–120C–7 and is the next generation to be produced.

2. The highest level of classification of information included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the Kingdom of Saudi Arabia 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 articles and services listed in this transmittal are authorized for release and export to the Kingdom of Saudi Arabia.

[FR Doc. 2023–06842 Filed 3–31–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–0L]

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)(5)(C) 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 with attached Transmittal 21–0L.

Dated: March 29, 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 29, 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)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 21-0L. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 17-36 of August 18, 2017.

Sincerely,

Jedidiah P. Royal
Deputy Director

Enclosures:
1. Transmittal

BILLING CODE 5001–06–C

Transmittal No. 21–0L

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C)), (AECA)

(i) *Purchaser:* Government of Romania
(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 17–36
Date: August 18, 2017
Military Department: Army
Funding Source: National Funds

(iii) *Description:* On August 18, 2017, Congress was notified by Congressional certification transmittal number 17–36 of the possible sale under Section 36(b)(1) of the Arms Export Control Act of 54 High Mobility Artillery Rocket Systems (HIMARS) Launchers, 81 Guided Multiple Launch Rocket Systems (GMLRS) M31A1-Unitary, 81 GMLRS M30A1-Alternative Warhead, 54 Army Tactical Missile Systems (ATACMS) M57 Unitary, 24 Advanced Field Artillery Tactical Data Systems (AFATDS), 15 High Mobility Multipurpose Wheeled Vehicles (HMMWV), Utility-Armored, M1151A1 and 15 HMMWVs, Armor Ready 2-Man, M1151A1. Included: 54 each M1084A1P2 HIMARS Resupply Vehicles (RSVs), 54 M1095 MTV Cargo Trailer with RSV kit, and 10 each M1089A1P2 FMTV Wreckers 30 Low Cost Reduced Range (LCRR) practice rockets. Also included repair parts, training and U.S. Government support. The estimated total cost was $1.25 billion. Major Defense Equipment (MDE) constituted $900 million of this total.

On March 12, 2019, 19–0B notified the addition of: forty-eight (48) Advanced Field Artillery Tactical Data Systems (AFATDS) (MDE); forty-five (45) M1152A1 HMMWVs—Armor Ready 2-Man (MDE); fifty-four (54) M1084A1P2 HIMARS Resupply Vehicles (MDE); and support and communications equipment, spare and repair parts, test sets, batteries, laptop computers, publications and technical data, facility design, personnel training and equipment, systems integration support, Quality Assurance Teams and a Technical Assistance Fielding Team, United States Government and contractor engineering and logistics personnel services (non-MDE). The additional MDE items were valued at $24.42 million, resulting in a new MDE value of $924.42 million, and additional non-MDE items were valued at $225.574 million, resulting in a total program increase of $250 million. The total case value increased to $1.5 billion.

On June 3, 2020, 20–0F notified the addition of: six (6) AN/TPQ–53 Radar Systems (MDE); three hundred eighty-four (384) 120MM High Explosive (HE) Cartridges (MDE); and support and communications equipment, vehicles, ammunition, transportation, spare and repair parts, test sets, batteries, laptop computers, publications and technical data, facility design, personnel training and equipment, systems integration support, Quality Assurance Teams and a Technical Assistance Fielding Team, United States Government and contractor engineering and logistics personnel services. (non-MDE). The additional MDE items were valued at $175 million, resulting in a new MDE value of $1.1 billion, and additional non-MDE items were valued at $75 million, resulting in a total program increase of $250 million. The total

program value increased to $1.75 billion.

(iv) This transmittal notifies the addition of:

1. Three (3) High Mobility Multipurpose Wheeled Vehicles (HMMWV), Armor Ready 2-Man, M1152A1 (MDE); and

2. Eighteen (18) Army Tactical Missile Systems (ATACMS) M57 Unitary (MDE)

The additional MDE items are valued at $45 million, resulting in a new MDE value of $1.145 billion. The total program value will increase to $1.795 billion.

(v) *Significance:* This proposed sale of defense articles and services supports Romania's ongoing effort to modernize its armed forces and increase the Army's capacity to counter threats posed by potential attacks. This will contribute to the Romanian's Armed Forces effort to update their capabilities and enhance interoperability with the U.S. and other allies.

(vi) *Justification:* This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a NATO ally in developing and maintaining a strong and ready self-defense capability. This proposed sale will enhance U.S. national security objectives in the region.

(vii) *Sensitivity of Technology:* The statement contained in the original AECA 36(b)(1) applies to the MDE items reported here.

(viii) *Date Report Delivered to Congress:* September 29, 2021

[FR Doc. 2023–06839 Filed 3–31–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–55]

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 21–55 with attached Policy Justification and Sensitivity of Technology.

Dated: March 29, 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

August 25, 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. 21-55, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost $350 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. 21–55

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 * ..	$ 0 million
Other	$350 million
TOTAL	$350 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
None

Non-MDE:
Defense services related to the future purchase of Standard Missile 6 Block I (SM–6) and Standard Missile 2 Block IIIC (SM–2 IIIC) missiles. These services include development; engineering, integration, and testing (EI&T); obsolescence engineering activities required to ensure readiness; 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–AVY)

(v) *Prior Related Cases, if any:* None

(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:* August 25, 2021

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia—Defense Services Related to Future Standard Missile Production

The Government of Australia has requested to buy defense services related to the future purchase of Standard Missile 6 Block I (SM–6) and Standard Missile 2 Block IIIC (SM–2 IIIC) missiles. These services include development; engineering, integration, and testing (EI&T); obsolescence engineering activities required to ensure readiness; U.S. Government and contractor engineering/technical assistance, and related studies and analysis support; technical and logistics support services; and other related elements of program and logistical support. The total estimated value is $350 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. Australia is strategically positioned to contribute 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.

The proposed sale will support the readiness and future sale of vital anti-air warfare capability that can be deployed from Australia's newest Hunter-Class Destroyers equipped with the latest AEGIS Combat Systems. The purchase of Standard Missile 6 Block I (SM–6) and Standard Missile 2 Block IIIC (SM–2 IIIC) missiles is currently included in Australia's procurement roadmap and will improve their ability to operate alongside U.S. and Allied naval forces against the full spectrum of naval threats. Australia will have no difficulty absorbing these defense services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal U.S. contractor will be Raytheon Missiles and Defense (RMD), Tucson, AZ. 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. 21–55

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 proposed sale will result in the transfer of sensitive and classified technical data related to obsolescence engineering, integration, and test activities required to ensure readiness for the future procurement of Standard Missile 6 Block I (SM–6) and Standard Missile 2 Block IIIC (SM–2 IIIC) missiles. No SM–6 Blk I or SM–2 IIIC hardware or software will be transferred under this proposed sale. Australia currently employs SM–2 Block IIIA and IIIB on Royal Australian Navy (RAN) AEGIS surface combatants, and has been afforded access to similar technical information for these delivered systems.

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 the Government of 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 articles and services listed in this transmittal are authorized for release and export to the Government of Australia.

[FR Doc. 2023–06840 Filed 3–31–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–54]

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 21–54 with attached Policy Justification and Sensitivity of Technology.

Dated: March 29, 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

August 25, 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. 21-54 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Republic of Korea for defense articles and services estimated to cost $258 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. 21–54

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:* Republic of Korea

Total Estimated Value:

Major Defense Equipment * ..	$251 million
Other	$ 7 million
TOTAL	$258 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Three thousand nine hundred fifty-three (3,953) Joint Direct Attack Munition (JDAM) Guidance Kits, KMU–556 for GBU–31

One thousand nine hundred eighty-one (1,981) JDAM Guidance Kits, KMU–557 for GBU–31, GBU–56

One thousand one hundred seventy-nine (1,179) JDAM Guidance Kits, KMU–572 for GBU–38

One thousand seven hundred fifty-five (1,755) FMU–139 Fuze Systems

Non-MDE:

Also included are DSU–42/B Detectors, Laser Illuminated Target for GBU–56; weapon spare parts, components and accessories; weapons training aids, devices, and spare parts; U.S. Government and contractor engineering, technical assistance, and logistical support

services; and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (KS–D–YAW, KS–D–YAX, KS–D–YAY)

(v) *Prior Related Cases, if any:* None

(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:* August 25, 2021

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea—Precision Guided Munitions

The Republic of Korea has requested to buy three thousand nine hundred fifty-three (3,953) Joint Direct Attack Munition (JDAM) Guidance Kits, KMU–556 for GBU–31; one thousand nine hundred eighty-one (1,981) JDAM Guidance Kits, KMU–557 for GBU–31, GBU–56; one thousand one hundred seventy-nine (1,179) JDAM Guidance Kits, KMU–572 for GBU–38; and one thousand seven hundred fifty-five (1,755) FMU–139 Fuze Systems. Also included are DSU–42/B Detectors, Laser Illuminated Target for GBU–56; weapon spare parts, components and accessories; weapons training aids, devices, and spare parts; U.S. Government and contractor engineering, technical assistance, and logistical support services; and other related elements of logistical and program support. The estimated total cost is $258 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States by helping to improve the security of a Major Non-NATO ally that continues to be an important force for political stability, peace, and economic progress in the Indo-Pacific region.

The proposed sale will improve the Republic of Korea's capability to meet current and future threats by increasing available stores of munitions on the Korean Peninsula in support of Alliance Operations Plans (OPLANs), as well as to fulfill conditions outlined by the Condition-Based Operational Control (OPCON) Transition Plan. The Republic of Korea will have no difficulty absorbing these articles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Boeing Corporation, St Louis, Missouri. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Republic of Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–54

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 Joint Direct Attack Munition (JDAM) is a guidance kit that converts existing unguided free-fall bombs into an accurate, adverse weather ''smart'' munition. The Guidance Set consists of a Tail Kit, which contains the Inertial Navigation System (INS) and a Global Positioning System (GPS), a set of Aerosurfaces and an umbilical cover, which allows the JDAM to improve the accuracy of unguided, General Purpose bombs. The JDAM weapon can be delivered from modest standoff ranges at high or low altitudes against a variety of land and surface targets during the day or night. The JDAM is capable of receiving target coordinates via preplanned mission data from the delivery aircraft, by onboard aircraft sensors (*i.e.,* FLIR, Radar, etc.) during captive carry, or from a third-party source via manual or automated aircrew cockpit entry. The Guidance Set, when combined with a warhead and appropriate fuze, forms a JDAM Guided Bomb Unit (GBU).

(a) The KMU–572 is the tail kit for a GBU–38 500LB JDAM.

(b) The KMU–556 is the tail kit for a GBU–31 2,000LB Mk–84 (General Purpose bomb body) JDAM.

(c) The KMU–557 is the tail kit for a GBU–31/–56 2,000LB BLU–109 (General Purpose bomb body) JDAM.

2. The Laser JDAM (GBU–56) is a 2,000LB JDAM that incorporates all the capabilities of the JDAM guidance tail kit and adds a DSU–42/B precision laser guidance set. The DSU–42/B sensor gives the weapon system an optional semi-active laser seeker. The addition of the DSU–42/B laser sensor combined with additional cabling and mounting hardware turns a GBU–31 JDAM into a GBU–56 LJDAM. The DSU–42/B consists of a laser spot tracker, a cable connecting the DSU–42/B to the basic JDAM guidance set, a cable cover, cable cover tie-down straps, modified tail kit door and wiring harness, and associated modified JDAM software that incorporates navigation and guidance flight software to support both LJDAM and standard JDAM missions. The DSU–42/B adds the flexibility to strike targets of opportunity, including mobile and moving targets, to an already accurate adverse weather GPS/INS guided JDAM.

3. The Joint Programmable Fuze (JPF) FMU–139D/B is a multi-delay, multi-arm and proximity sensor compatible with general purpose blast, frag and hardened-target penetrator weapons. The JPF settings are cockpit selectable in flight when used numerous precision-guided weapons. It can interface with the following weapons: GBU–31, GBU–38, and GBU–56.

4. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

5. 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.

6. A determination has been made that the Republic of Korea 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.

7. All defense articles and services listed in this transmittal have been authorized for release and export to the Republic of Korea.

[FR Doc. 2023–06838 Filed 3–31–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–52]

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 21–52 with attached Policy Justification and Sensitivity of Technology.

Dated: March 29, 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

July 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. 21-52, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Israel for defense articles and services estimated to cost $3.4 billion. 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. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 21–52

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 Israel

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ 2.4 billion
Other	$ 1.0 billion
TOTAL	$ 3.4 billion

Funding Source: Foreign Military Financing (FMF)

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Up to Eighteen (18) CH–53K Heavy Lift Helicopters

Up to Sixty (60) T408–GE–400 Engines (54 installed, 6 spares)

Up to Thirty-six (36) Embedded Global Positioning System/Inertial Navigation Systems (EGI) with Selective Availability/Anti-Spoofing Module (SAASM)

Non-MDE:

Also included is communication equipment; GAU–21 .50 caliber Machine Guns; Mission Planning System; facilities study, design and construction; spare and repair parts; support and test equipment; publications and technical documentation; aircrew and maintenance training; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Navy (IS–P–SCN)

(v) *Prior Related Cases, if any:* None

(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 Annex Attached

(viii) *Date Report Delivered to Congress:* July 30, 2021

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel—CH–53K Heavy Lift Helicopters with Support

The Government of Israel has requested to buy up to eighteen (18) CH–53K Heavy Lift Helicopters; up to sixty (60) T408–GE–400 Engines (54 installed, 6 spares); and up to thirty-six (36) Embedded Global Positioning System/Inertial Navigation Systems (EGI) with Selective Availability/Anti-Spoofing Module (SAASM). Also included is communication equipment; GAU–21 .50 caliber Machine Guns; Mission Planning System; facilities study, design and construction; spare and repair parts; support and test equipment; publications and technical documentation; aircrew and maintenance training; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The total estimated cost is $3.4 billion.

The United States is committed to the security of Israel, and it is vital to U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

The proposed sale will improve the Israeli Air Force's capability to transport armored vehicles, personnel, and equipment to support distributed operations deep inland from a sea-based center of operations. Israel will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense. Israel will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Lockheed Martin Global, Inc., Shelton, Connecticut; and General Electric Company, Lynn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale. Any offset agreements will be defined in negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale will require multiple trips by U.S. Government and contractor representatives to participate in program and technical reviews. It will also require approximately four (4) contractor support representatives to reside in country for a period of three (3) years to support this program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–52

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 CH–53K Heavy Lift Helicopter focuses primarily on the transport of armored vehicles, personnel, and equipment to support distributed operations deep inland from a sea-based center of operations. The CH–53K carries several sensors and data links to enhance its ability to operate in hostile environments and in coordination with group forces. The aircraft is night vision compatible. The sensitive technologies include:

a. Communications security devices contain sensitive encryption algorithms and keying material. The purchasing country has previously been released and utilizes COMSEC devices in accordance with set procedures and without issue.

b. Identification Friend or Foe (IFF) (KIV–78) contains embedded security devices containing sensitive encryption algorithms and keying material. The purchasing country will utilize COMSEC devices in accordance with set procedures.

c. GPS PPS/SAASM/MGUE/ADAP—Global Positioning System (GPS) Precise Positioning Service (PPS) provides space-based Global Navigation Satellite System (GNSS) signals that have reliable location and time information in all weather, at all times, and anywhere on or near the earth when and where there is an unobstructed line of sight to four or more GPS satellites. The Selective Availability/Anti-Spoofing Module (SAASM) and Modernized GPS User Equipment (MGUE) are used as military embedded GPS receivers (EGRs) to provide for decryption and use of the GPS PPS by the Embedded GPS/Inertial Navigation System (EGI). In addition, the Advanced Digital Antenna Production (ADAP) GPS anti-jam protection system provides electronic protection from enemy countermeasures to disrupt and jam GPS signals. The combination of the EGI and the ADAP provide for robust positioning, navigation, and timing (PNT) capability.

2. All the mission data, including sensitive parameters, is loaded from an off board station before each flight and does not stay with the aircraft after electrical power has been removed. Sensitive technologies are protected as defined in the program protection and anti-tamper plans.

3. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware or 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.

5. A determination has been made that Israel can provide substantially the same degree of protection for the

sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

6. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Israel.

[FR Doc. 2023–06846 Filed 3–31–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Education for Seapower Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Navy, U.S. Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Education for Seapower Advisory Board (E4SAB) will take place.

DATES: The meeting is open to the public and will be held on Wednesday, April 12, 2023 from 1 p.m. to 5 p.m. Eastern Time Zone (ET).

ADDRESSES: The open meeting will be held at the Admiral Gooding Center, Navy Yard, Washington, DC. The meeting will be handicap accessible. Escort is required.

FOR FURTHER INFORMATION CONTACT: Dr. Kendy Vierling, Designated Federal Officer (DFO), Office of the Assistant Secretary of the Navy (Manpower and Reserve Affairs), Pentagon, Washington, DC 20350–1000, 703–695–4589, *kendy.k.vierling.civ@us.navy.mil.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of Title 5, United States Code (U.S.C.)(commonly known as the Federal Advisory Committee Act (FACA) (formerly 5 U.S.C. App.), as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and Title 41 Code of Federal Regulations (CFR) 102–3.140 and 102–3.150.

Due to circumstances beyond the control of the Designated Federal Officer, the Education for Seapower Advisory Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its April 12, 2023 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: The purpose of the meeting will include discussion on naval education institutions' accreditation compliance, organizational management, and other matters of interest to the DoD, as determined by the Secretary of Defense, the Deputy Secretary of Defense, or the Secretary of the Navy (SECNAV).

Agenda: On April 12, 2023, SECNAV is expected to speak regarding his vision for naval education. The E4SAB will receive overview briefings and hold discussions on naval education initiatives, the Naval War College, Naval Postgraduate School, and Naval Community College.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the April 12, 2023 meeting, as well as supporting documents, can be found on the website: *https://www.secnav.navy.mil/mra/e4sab.*

Meeting Accessibility: Pursuant to section 1009(a)(1) of title 5 U.S.C. and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public from 1:00 p.m. to 5:00 p.m. (ET) on April 12, 2023. Members of the public who wish to attend the meeting in person, attendance is on a space available basis from 1:00 p.m.to 5:00 p.m. (ET). Persons desiring to attend the meeting are required to submit their name, organization, email address, and telephone contact information to Ms. Tiphany Morales at *tiphany.e.morales.civ@us.navy.mil* no later than Monday, April 3, 2023.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Tiphany Morales at *tiphany.e.morales.civ@us.navy.mil* no later than Monday, April 10, 2023 (by 5:00 p.m. ET) so that appropriate arrangements can be made.

Written Statements: Pursuant to 41 CFR 102–3.105 and 102–3.140, and section 1009(a)(3) of title 5 U.S.C., written statements to the committee may be submitted at any time or in response to a stated planned meeting agenda by email to Dr. Kendy Vierling at *kendy.k.vierling.civ@us.navy.mil* with the subject line, ''Comments for E4SAB Meeting.'' Written comments pertaining to a specific topic being discussed at the planned meeting received no later than 5:00 p.m. (ET) on Friday, April 10, 2023 will be distributed to the E4SAB, in the order received. Comments pertaining to the agenda items will be discussed during the public meeting. Any written statements received after the deadline may not be provided to, or considered by, the Committee during the April 12, 2023 meeting, but will be provided to the members of the E4SAB prior to the next scheduled meeting. Any comments received by the E4SAB will be posted on the website *https://www.secnav.navy.mil/mra/e4sab.*

Dated: March 28, 2023.

A.R. Holt,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2023–06775 Filed 3–31–23; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0139]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of Transition Supports for Youth With Disabilities

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 3, 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 Yumiko Sekino, (202) 374–0936.

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: Evaluation of Transition Supports for Youth with Disabilities.

OMB Control Number: 1850–NEW.

Type of Review: New ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 2,069.

Total Estimated Number of Annual Burden Hours: 1,257.

Abstract: This study will examine the effectiveness, implementation, and costs of two new strategies for supporting youth with disabilities and their families to prepare for a successful transition from high school to adult life. The first strategy is based on a model of self-determination instruction designed to help students develop skills such as goal setting, decision making, planning and apply those skills to plan and pursue their transition goals. The second strategy not only teaches self-determination skills but also provides individual mentoring to help students engage in and take active steps toward their post-school goals. The study will compare the intermediate and post-school outcomes for approximately 3,000 students who have an individualized education program and are approximately two years from high school graduation. Participating students in up to 100 schools and 16 districts will be randomly assigned to receive one of the study's strategies or continue with the regular transition supports they receive from their school.

Dated: March 28, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–06785 Filed 3–31–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2023–OFO–0021]

Privacy Act of 1974; System of Records

AGENCY: Office of Security, Facilities and Logistics, Office of Finance and Operations, U.S. Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a new system of records entitled ''Emergency Notification System (ENS)'' (18–03–06). The Emergency Notification System (ENS) provides a notification system for the Department's internal Continuity of Operations (COOP) and Pandemic plans, as well as day-to-day emergency management efforts. ENS provides real-time notifications to Department employees during an emergency event. ENS also gives Department employees the ability to access and modify their own personal information and preferences via a self-service portal, and system administrators the ability to generate reports to verify the status of the aforementioned emergency alerts.

DATES: Submit your comments on this new system of records notice on or before May 3, 2023.

This new system of records notice will become applicable upon publication in the **Federal Register** on April 3, 2023, unless it needs to be changed as a result of public comment. The routine uses outlined in the section titled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' will become effective on the expiration of the 30-day period of public comment on May 3, 2023, unless they need to be changed as a result of public comment. The Department will publish any significant changes to the system of records or routine uses resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *www.regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *www.regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *www.regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''help'' tab.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Lisa Senecal, Information System Owner, Office of Security, Facilities and Logistics, Office of Finance and Operations, U.S. Department of Education, 400 Maryland Avenue SW, Room 224–50, Washington, DC 20202–6110. Telephone: (202) 205–8123. Email: *lisa.senecal@ed.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

In support of the Department's COOP, Devolution, Pandemic, and Reconstitution Plans, as well as day-to-day emergency management efforts, the ENS provides the Department an emergency alert tool to communicate, via real-time notifications, pertinent information to Department employees during emergencies (*e.g.,* severe weather events). More specifically, the ENS sends a mass message to the email addresses and phone numbers associated with Department employees located in the emergency's area. Depending on the alert type, the system can also solicit a response from recipients to verify their status during an emergency. In addition, the system can generate reports regarding the

responses received, which system administrators can monitor in real time. System administrators can also generate reports on whom alerts were sent to and when these alerts were sent.

ENS consists of two components: a desktop application accessed by all users and a browser-based web application accessed by system administrators. Once ENS is deployed, the desktop application will be installed on all Government Furnished Equipment (GFE) computers but will only be accessible to current Department employees.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, 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.

Denise L. Carter,

Acting Assistant Secretary, Office of Finance and Operations.

For the reasons discussed in the preamble, the Acting Assistant Secretary for the Office of Finance and Operations of the U.S. Department of Education (Department) publishes a notice of a new system of records to read as follows:

SYSTEM NAME AND NUMBER:

Emergency Notification System (ENS) (18–03–06).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Education, Office of Security, Facilities and Logistics, Office of Finance and Operations, 400 Maryland Avenue SW, Washington, DC 20202–6110.

BlackBerry, 2988 Campus Drive, Suite 200, San Mateo, CA 94403. Blackberry hosts the infrastructure that supports the ENS applications, as a Software-as-a-Service, including backend application processing and data hosting.

SYSTEM MANAGER(S):

Lisa Senecal, Information System Owner, Office of Security, Facilities and Logistics, Office of Finance and Operations, U.S. Department of Education, 400 Maryland Avenue SW, Room 224–50, Washington, DC 20202–6110.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Presidential Policy Directive 40, National Continuity Policy (July 15, 2016), Federal Continuity Directive 1, Federal Executive Branch National Continuity Program and Requirements (January 17, 2017), and Executive Order 13618 (July 6, 2012), as amended by Executive Order 13961 (December 7, 2020).

PURPOSE(S) OF THE SYSTEM:

The purposes of the ENS are to store and maintain emergency contact information for current Department employees:

(1) To maintain and implement emergency plans, including Continuity of Operations and facility evacuation plans; and

(2) To notify, locate, and mobilize individuals as necessary during emergency or other threatening situations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Department employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system are comprised of the primary contact information for current Department employees, such as their first name, last name, business phone number, business email address, and business location, and, where provided by current Department employees on a voluntarily basis, their alternate contact information, such as their personal email address and personal phone number.

RECORD SOURCE CATEGORIES:

Current Department employees, and the Department Active Directory System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), under a computer matching agreement.

(1) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff when necessary to respond to an inquiry from the member made at the written request of and on behalf of the individual. The member's right to the information is no greater than the right of the individual who requested it.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive Order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the following parties listed in sub-paragraphs (i) through (v) of this routine use is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records from this system of records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in their official capacity;

(iii) Any Department employee in their individual capacity where the U.S. Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation of the employee;

(iv) Any Department employee in their individual capacity when the

Department has agreed to represent the employee; and

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to DOJ.* If the Department determines that disclosure of certain records to DOJ is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to judicial or administrative litigation or ADR to disclose certain records from this system of records to an adjudicative body before which the Department is authorized to appear or to a person or an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(4) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to DOJ or the Office of Management and Budget (OMB) if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(5) *Disclosure to DOJ.* The Department may disclose records to DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(6) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosing records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(7) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to a grievance, complaint, or disciplinary proceeding involving a present or former employee of the Department, the Department may disclose the record during investigation, fact-finding, or adjudication to any party to the grievance, complaint, or action; to the party's counsel or representative; to a witness; or to a designated factfinder, mediator, or other person designated to resolve issues or decide the matter.

(8) *Labor Organization Disclosure.* The Department may disclose a record to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of a labor organization recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(9) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record from this system of records to a Federal, State, Tribal, or local agency, or to another public agency or professional organization, maintaining civil, criminal, or other relevant enforcement or other pertinent records, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, Tribal, local, or other public agency or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(10) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system of records to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (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 Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(11) *Disclosure in Assisting Another Agency in Responding to a Breach of Data.* The Department may disclose records from this system of records to another Federal agency or Federal entity, when the Department determines that information from this system of records 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, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(12) *Disclosure to National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORAGE OR RECORDS:

Records are stored on an encrypted system within a secured and controlled environment.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by an employee's name only for administrative purposes to include associating a Department employee to a specific region or building to receive tailored alerts for their geographic area.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records in this system of records will be retained and disposed of in accordance with NARA General Records Schedule 5.3, Item 020.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

A vendor that is Federal Risk and Authorization Management Program (FedRAMP) certified hosts the ENS system outside the Department's network. The Department access and uses this system as a Software as a Service (SaaS) and requires the vendor to complete routine testing of its environment to ensure the confidentially, integrity, and availability of the information in the system and services provided. The Cloud Service Provider enforces security controls over the physical facility where the system is hosted in adherence with FedRAMP standards and provides continuous monitoring reports to the Department.

The ENS system utilizes role-based authentication to ensure only authorized users can access information, and they can only access the information needed to perform their duties. Authentication to the system is permitted only over secure, encrypted connections.

RECORD ACCESS PROCEDURES:

If you wish to request access to records regarding you in this system of records, contact the system manager at the address listed under SYSTEM MANAGER. You must provide necessary particulars such as your full name, address, and telephone number, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Your request must meet the requirements of the Department's Privacy Act regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in this system of records, contact the system manager at the address listed under SYSTEM MANAGER. You must provide your full name, address, and telephone number, and any other identifying information requested by the Department to distinguish between individuals with the same name. Your request must also identify the particular record within the system that you wish to have changed, state whether you seek an addition to or a deletion or substitution of the record, and explain the reasons why you wish to have the record changed. Your request must meet the requirements of the Department's Privacy Act regulations in 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in this system of records, contact the system manager at the address listed under SYSTEM MANAGER. You must provide your full name, address, and telephone number, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Your request must meet the requirements of the Department's Privacy Act regulations in 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2023–06871 Filed 3–31–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. 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.

Docket Nos.	File date	Presenter or requester
Prohibited:		
CP21–465–000	3–20–2023	FERC Staff.[1]
Exempt:		
P–77–000	3–21–2023	U.S. Representative Mike Thompson.

[1] Email comments dated 3/14/23 from Ryan Sandman.

Dated: March 28, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–06851 Filed 3–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX23–4–000]

Pome BESS LLC; Notice of Filing

Take notice that on March 27, 2023, pursuant to sections 210 and 211 of the Federal Power Act,[1] Pome BESS LLC (Pome BESS) filed an application requesting that the Federal Energy Regulatory Commission (Commission) issue an order requiring San Diego Gas & Electric Company (SDG&E) to provide interconnection and transmission services for the proposed Pome BESS

[1] 16 U.S.C. 824i and 824j.

battery energy storage facility under the terms and conditions of the Transmission Control Agreement between SDG&E and the California Independent System Operator Corporation (CAISO), the SDG&E TO Tariff, CAISO's Fifth Replacement FERC Electric Tariff,[2] and the Large Generator Interconnection Agreement among Pome BESS, SDG&E, and CAISO, dated October 20, 2022, as they may be in effect from time to time.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on April 27, 2023.

Dated: March 28, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–06850 Filed 3–31–23; 8:45 am]

BILLING CODE 6717–01–P

[2] Capitalized terms that are not otherwise defined herein have the meanings set forth in the CAISO Tariff.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1470–000]

Cottontail Solar 2, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Cottontail Solar 2, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 17, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 28, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–06855 Filed 3–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–502–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Waiver Period for Water Quality Certification Application

On August 24, 2022, Transcontinental Gas Pipe Line Company, LLC submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with Virginia Department of Environmental Quality (VADEQ), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 157.22(b) of the Commission's regulations,[1] we hereby notify the VADEQ of the following:

Date of Receipt of the Certification Request: August 25, 2022.

Reasonable Period of Time to Act on the Certification Request: August 25, 2023.

If VADEQ fails or refuses to act on the water quality certification request on or before the above date, then the agency

[1] 18 CFR 157.22(b) (2022).

certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: March 28, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–06856 Filed 3–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1471–000]

MPower Energy NJ LLC, Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of MPower Energy NJ LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 17, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 28, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–06852 Filed 3–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1476–000]

Cottontail Solar 8, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Cottontail Solar 8, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 17, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 28, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–06849 Filed 3–31–23; 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: RP23–592–000.

Applicants: Gulf Run Transmission, LLC.

Description: § 4(d) Rate Filing: New NRA—TGC to be effective 4/1/2023.

Filed Date: 3/27/23.
Accession Number: 20230327–5133.
Comment Date: 5 p.m. ET 4/10/23.
Docket Numbers: RP23–593–000.
Applicants: ANR Pipeline Company.
Description: Compliance filing: ANR OFO Waiver Request to be effective N/A.
Filed Date: 3/27/23.
Accession Number: 20230327–5155.
Comment Date: 5 p.m. ET 4/10/23.
Docket Numbers: RP23–594–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—Other Shippers 5 NRA's to be effective 4/1/2023.
Filed Date: 3/27/23.
Accession Number: 20230327–5172.
Comment Date: 5 p.m. ET 4/10/23.
Docket Numbers: RP23–595–000.
Applicants: Nautilus Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rates—HE&D Offshore, L.P. to be effective 3/24/2023.
Filed Date: 3/27/23.
Accession Number: 20230327–5194.
Comment Date: 5 p.m. ET 4/10/23.
Docket Numbers: RP23–596–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmt (Chevron 41610 eff 3–27–23) to be effective 3/27/2023.
Filed Date: 3/28/23.
Accession Number: 20230328–5018.
Comment Date: 5 p.m. ET 4/10/23.
Docket Numbers: RP23–597–000.
Applicants: Horizon Pipeline Company, L.L.C.
Description: Compliance filing: Horizon Penalty Revenue Crediting report for Year 2022 to be effective N/A.
Filed Date: 3/28/23.
Accession Number: 20230328–5019.
Comment Date: 5 p.m. ET 4/10/23.
Docket Numbers: RP23–598–000.
Applicants: Database returns error. There is a problem with archive data and system. Contact Administrator.
Description: Compliance filing: Penalty Revenue Crediting Report from July through December 2022 to be effective N/A.
Filed Date: 3/28/23.
Accession Number: 20230328–5020.
Comment Date: 5 p.m. ET 4/10/23.
Docket Numbers: RP23–599–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—Multiple Shippers (15 NRA's) to be effective 4/1/2023.
Filed Date: 3/28/23.
Accession Number: 20230328–5051.
Comment Date: 5 p.m. ET 4/10/23.
Docket Numbers: RP23–600–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—ESS—Spire Alabama to be effective 4/1/2023.
Filed Date: 3/28/23.
Accession Number: 20230328–5145.
Comment Date: 5 p.m. ET 4/10/23.

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 28, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–06853 Filed 3–31–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0052; FRL–10872–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NSPS for Incinerators (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Incinerators (EPA ICR Number 1058.14, OMB Control Number 2060–0040) 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 July 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 3, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0052, 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. The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 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 31, 2023, during a 60-day comment period (87 FR 43843). An agency may not conduct or sponsor, and a person is not required to response to, a collection of information, unless it displays a currently valid OMB control number.

Public comments were previously requested, via the **Federal Register** on July 22, 2022, during a 60-day comment period (87 FR 43843). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. For additional information about EPA's

public docket, visit *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Incinerators (40 CFR part 60, subpart E) were proposed on July 25, 1977; and amended on May 10, 2006. These regulations apply to existing incinerators that charge more than 45 metric tons per day (50 tons per day) of solid waste, and that commenced either construction or modification after August 17, 1971. Solid waste is defined as refuse, more than 50 percent of which is municipal type waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustibles, and noncombustible materials such as glass and rock. New incinerators will be subject to either 40 CFR part 60, subpart Eb, or 40 CFR part 60, subpart AAAA. Additionally, incinerators that are covered by either 40 CFR part 60, subparts Cb, Eb, AAAA, or BBBB; or by an EPA-approved State section 111(d)/129 plan implementing Subpart Cb or BBB; or by 40 CFR part 62, subpart FFF or JJJ, not subject to the above standards. This specific information is being collected to assure compliance with 40 CFR part 60, subpart E.

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 notification, reports, and records are essential in determining compliance, and are required of all affected facilities subject to the NSPS.

Form numbers: None.

Respondents/affected entities: Existing incinerators that charge more than 45 metric tons per day (50 tons per day) of solid waste, and that commenced either construction or modification after August 17, 1971.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart E).

Estimated number of respondents: 36 (total).

Frequency of response: Initially and occasionally.

Total estimated burden: 3,730 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $462,000 (per year), which includes $128,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: The total decrease in burden from the most recently approved ICR is due to adjustments. The adjustment decrease in burden from the most-recently approved ICR is due to a decrease in the number of sources. To identify the number of respondents subject to subpart E, we reviewed facilities identified in EPA's Enforcement and Compliance History Online (ECHO) database and the EPA's Large Municipal Waste Combustor and Small Municipal Waste Combustor Inventory (collected in 2019) to identify sources not subject to subpart E. The total number of respondents decreased from 87 in the previous ICR to 36 respondents. These changes reflect a more accurate estimate of the existing universe of incinerators subject to subpart E, which were last updated in 2007. In the previous ICR, estimates for Capital costs were in $2007 dollars, and the O&M costs were adjusted to $2018 dollars. For this ICR, the Capital and O&M costs were adjusted to $2021 dollars based on annual CEPCI values.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023–06826 Filed 3–31–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0060; FRL–10874–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NSPS for Stationary Gas Turbines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Stationary Gas Turbines (EPA ICR Number 1071.14, OMB Control Number 2060–0028) 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 July 31, 2023. Public comments were previously requested via the **Federal Register** (87 FR 43843) 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 3, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0060, 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 particular information collection by selecting ''Currently under 30-dat 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 March 31, 2023. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on July 22, 2022 during a 60-day comment period (87 FR 43843). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Stationary Gas Turbines (40 CFR part 60, subpart GG) were promulgated on September 10, 1979; and last-amended on February 27, 2014. These regulations

apply to existing facilities and new facilities that have stationary gas turbines with a heat input at peak load equal or greater than 10.7 gigajoules per hour (based on the lower heating value of the fuel fired). There are no new facilities under this subpart, as any facility which commenced construction, modification, or reconstruction after February 18, 2005 is subject to the NSPS for Stationary Combustion Turbines (40 CFR part 60, subpart KKKK). This information is being collected to assure compliance with 40 CFR part 60, subpart GG.

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: Stationary gas turbine facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart GG).

Estimated number of respondents: 535 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 69,100 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $8,290,000 (per year), includes $0 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations: (1) the regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023–06819 Filed 3–31–23; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of Open Meeting of the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (EXIM).

TIME AND DATE: Tuesday, April 18th from 1:00 p.m.–2:30 p.m. ET.

PLACE: The meeting will be held virtually.

STATUS: Public Participation: The meeting will be open to public participation and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *external@exim.gov.* Interested parties may register for the meeting at: *https://events.teams.microsoft.com/event/9ec06dfa-dc1e-4a07-aec6-8e7396f6ba7e@b953013c-c791-4d32-996f-518390854527.*

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs designed to support the expansion of financing support for U.S. manufactured goods and services in Sub-Saharan Africa.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Engagement Specialist at 202–480–0062.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2023–06955 Filed 3–30–23; 4:15 pm]

BILLING CODE 6690–01–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m., Thursday, April 13, 2023.

PLACE: You may observe this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to observe, at least 24 hours in advance, visit *FCA.gov*, select ''Newsroom,'' then select ''Events.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The following matters will be considered:

- Approval of March 9, 2023, Minutes
- Quarterly Report on Economic Conditions and Farm Credit System Condition and Performance

CONTACT PERSON FOR MORE INFORMATION: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2023–06936 Filed 3–30–23; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 20–3; DA 23–250; FR ID 133942]

Wireless Telecommunications Bureau Seeks Comment on ATIS Waiver Request on Behalf of the Covered Entities of the Hearing Aid Compatibility Task Force

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: In this document, the Wireless Telecommunications Bureau (Bureau) of the Federal Communications Commission (Commission) seeks comment on a petition for waiver (Petition) filed by ATIS requesting waiver for all entities subject to the hearing aid compatibility rules. The Petition seeks to allow wireless handsets to satisfy a reduced volume control testing methodology to be certified as hearing-aid compatible.

DATES: Interested parties may file comments on or before May 3, 2023, and reply comments on or before May 18, 2023.

ADDRESSES: You may submit comments, identified by WT Docket No. 20–3, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be

addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530.

FOR FURTHER INFORMATION CONTACT: For further information on this proceeding, contact Eli Johnson, *Eli.Johnson@fcc.gov,* of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, (202) 418–1395.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, WT Docket No. 20–3, DA 23–250, released on March 23, 2023. The full text of this document is available for public inspection on the FCC's website at *https://docs.fcc.gov/public/attachments/DA-23-250A1.docx.*

Synopsis

1. The Wireless Telecommunications Bureau seeks comment on a petition for waiver (Petition) filed by ATIS requesting waiver of § 20.19(b)(1) and (b)(3) of the Commission's rules for all entities subject to the hearing aid compatibility rules. The Petition seeks to allow wireless handsets to satisfy a reduced volume control testing methodology to be certified as hearing-aid compatible. In particular, we seek comment on this waiver request in the context of the Commission's commitment to attaining 100% hearing aid compatibility of covered wireless handsets, as soon as achievable, as well as the Commission's previous finding that a volume control requirement is necessary ''to ensure the provision of effective telecommunications for people with hearing loss.''

2. The Commission's commitment to a volume control requirement dates back to the original hearing aid compatibility order in 2003. Since then, the Commission has repeatedly explored the issue and in 2017 concluded that ''the public interest and the objectives mandated by section 710 of the Act will be served by modifying the Commission's acoustic coupling HAC rules for wireless handsets to include a volume control requirement designed to accommodate people with hearing loss.'' The Commission affirmed its belief ''that a volume control requirement that specifies certain levels of amplification as an element of hearing aid compatibility is just as necessary for wireless handsets as it is for wireline phones, to ensure the provision of effective telecommunications for people with hearing loss.'' In deciding to adopt a wireless volume control requirement, the Commission stated that ''a volume control requirement will not only improve communications for those using hearing aids and cochlear implants, it also will help millions of Americas with hearing loss who do not use these devices.''

3. While the Commission adopted a volume control requirement in 2017, the Commission delayed compliance with the requirement until March 1, 2021. At the time the Commission adopted this rule, there was no standard for volume control, but the Commission anticipated that ANSI would adopt a standard that the Commission could incorporate into its rules. The Commission expected to adopt the ANSI volume control standard by 2019 in order to give manufacturers two years following adoption to build the standard into new handsets. It was not until 2019, however, that ANSI submitted to the Commission as part of the 2019 ANSI Standard the ANSI/TIA–5050–2018 Volume Control Standard (ANSI/TIA Volume Control Standard), which is incorporated into the 2019 ANSI Standard. Commenters broadly supported the adoption of the 2019 ANSI Standard and the related ANSI/TIA Volume Control Standard. Both standards are incorporated into the Commission's rules by reference (*i.e.,* the standards are part of the Commission's rules). Under the Commission's rules, beginning on June 5, 2023, a handset will be considered ''hearing aid compatible'' if it ''meets the 2019 ANSI Standard for all frequency bands that are specified in the ANSI standard and all air interfaces over which it operates on those frequency bands, and the handset has been certified as compliant with the ANSI/TIA-Volume Control Standard.

4. According to ATIS's Petition, during the course of the hearing aid compatibility Task Force's work this past spring, the Task Force discovered ''significant and material problems with the methodology used for testing volume control.'' Specifically, Working Group 3 of the Task Force received data on eighteen mobile handsets that were tested under the new standards. ATIS states that the ANSI/TIA Volume Control Standard's methodology for testing volume control resulted in every current HAC-certified handset they tested failing to pass the standard.

5. Accordingly, ATIS specifically requests a waiver of § 20.19(b)(1) and (b)(3), asking us to allow wireless handsets to satisfy a reduced volume control testing methodology instead of the full ANSI/TIA Volume Control Standard in order to be certified as hearing-aid compatible. ATIS asserts that there is a ''problem with the underlying testing methodology'' in the ANSI/TIA Volume Control Standard that renders compliance with the ANSI 2019 Standard functionally impossible for handsets. ATIS proposes that, for the duration of the waiver, the Commission allow a handset to be certified as hearing-aid compatible if it:

i. Meets the following clauses of the 2019 ANSI Standard:

a. RF Immunity Test (M—''clause 4'') and

b. T-Coil Compatibility Test (T—''clause 6'')

ii. Passes the conversational gain test in the ANSI/TIA Volume Control Standard for all available codecs and air interface combinations at the 2N level; and

iii. Obtains passing results for at least one of the device's available codecs for the distortion and frequency response requirements in the ANSI/TIA Volume Control Standard. Under the proposed waiver, ATIS also requests that test codecs be limited to those that are in scope for the ANSI/TIA Volume Control Standard, which include narrowband and wideband codecs.

6. ATIS asserts that TIA is in the process of ''reinitializing'' its standards committee to revise the ANSI/TIA Volume Control Standard. ATIS then notes that stakeholders would need a period of time for testing and implementation of the standard before the Commission considers adopting the revised standard into its rules. ATIS requests that the waiver remain in effect until the Commission has had the opportunity to review the revised standard.

7. In the context of the Commission's commitment to attaining 100% hearing aid compatibility for handsets, to the extent achievable, as well as the significance of the volume control standard for improving accessibility to handsets for consumers with hearing loss, we seek comment on how to address any request for waiver of the volume control standard, as well as the scope of this particular request.

8. We note that when the Commission adopted a volume control requirement for mobile handsets in October 2017, work on a wireless volume control

standard was already well underway. In 2019, the current standard was completed and was submitted to the Commission by the ASC C63 Committee with a request that it be incorporated in the Commission's rules. In the ensuing rulemaking, industry commenters supported adoption of the standard, and no party raised concerns about the suitability of the testing requirements for volume control. Accordingly, we seek comment on what steps the covered entities took, prior to the recent testing conducted by the Task Force, to ensure that they would be able to comply with the adopted standard, which was developed by technical committees on which affected manufacturers ordinarily are well represented.

9. We seek comment on the potential impact of this waiver request on consumers, as well as the application of the Commission's established waiver standard. In particular, we seek comment on the impact of the requested waiver of the volume control requirement on the more than 30 million Americans who have hearing loss. Would a grant be consistent with the Commission's commitment to implementing a volume control standard to improve accessibility and with our statutory duties under section 710 of the Communications Act of 1934, as modified? How would a denial of the requested waiver impact consumers? In addition, we seek comment on whether and how the requested waiver would further our goal of making 100% of wireless handsets hearing-aid compatible. Do individuals and consumer groups representing individuals who are deaf and hard of hearing support the scope of the waiver request?

10. We also seek comment on the scope of the waiver request. The waiver request seeks a departure from the volume control standard previously supported by parties and adopted into the Commission's rules. Is the alternative volume control testing methodology proposed by ATIS sufficient to ensure that handsets have adequate volume control? Did the covered entities perform any testing to ensure that this alternative volume control testing methodology would ensure that handsets have sufficient volume control? If so, we encourage industry to share data related to this testing in their comments.

11. We seek comment on the portion of the waiver related to conversational gain and the scope of that request. The waiver proposes to test only the 2N force, which replicates the experience of hearing aid users. The ANSI/TIA Volume Control Standard, however, also requires testing of conversational gain at the 8N force, which is intended to replicate the experience of those consumers with hearing loss who do not use hearing aids. The waiver request does not specify why covered entities need a waiver of the 8N force portion of the conversational gain test, other than the ''high failure rate'' at the 8N force. What specific problem with the 8N testing requirement makes compliance with the test problematic? Are there steps manufacturers could take that would address such problems and enable their devices to pass the test? How would the testing methodology proposed by ATIS, which would include a waiver of the requirement to test conversational gain at the 8N force, ensure that a handset's conversational gain is suitable for those consumers with hearing loss that do not use hearing aids? Should we maintain the testing requirement at the 8N force, as specified in the ANSI/TIA Volume Control Standard?

12. We seek comment on the portion of the waiver request related to distortion and frequency response and its scope. Guidance from the Office of Engineering and Technology Knowledge Database (KDB) requires the worst-case test result to be submitted for certification—which ATIS suggests ''implicitly require[es] an all-codec approach.'' With this in mind, would it be sufficient to test and document only one of a device's available codecs for the distortion and frequency response requirements of the ANSI/TIA Volume Control Standard, as ATIS requests? What was the basis for the Task Force working group's finding that ''meeting the distortion and frequency response requirements when tested with a single codec'' is ''sufficient to indicate that the amplifier/speaker combination is capable of producing the desired output signal quality and level''? Did the working group or covered entities perform any testing to ensure that this would be the case? How can we be sure that the consumer experience would not be negatively affected if testing only one of the device's available codecs for distortion and frequency response? If testing only one of a device's available codecs is sufficient, why was the ANSI/TIA Volume Control Standard developed to test both narrowband and wideband codecs? Which specific types of codecs are incompatible with the pulse-noise test? If we were to grant a waiver, is there a way to tailor the request more narrowly for relief to address ATIS's concerns with the pulse-noise signal test? For example, could we limit the tests to only those codecs within the scope of the ANSI/TIA Volume Control Standard?

13. We also seek comment on whether we should impose other conditions on the waiver, if granted. For example, should we require labeling specifying that a handset tested under this methodology did not meet the full volume control standard? What other conditions are necessary to ensure that consumers with hearing loss have access to hearing-aid compatible handsets that meet established technical standards?

14. Finally, we seek comment on the timeframe contemplated for the waiver. We note that the request does not seek a specific length of time for the waiver. If granted, should we set additional time limits or reporting requirements on the waiver? For example, should we consider requiring ATIS to submit quarterly reports on the progress of revising the volume control standard? In order to ensure hearing aid compatibility compliance pursuant to the ATIS waiver and because timely hearing aid compatibility compliance is in the public interest, should we consider requiring the waiver's covered entities to participate in the TIA standards-setting process? Should we establish a period of time for testing and implementation of the standard?

15. ATIS cites as evidence the Task Force's concurrently filed Final Report and Recommendation (Report), which recommends revisions to our hearing aid compatibility rules—including revisions to the standards for volume control testing. However, we do not seek feedback here on the Report or its recommendations, except to the extent that ATIS relies on studies in the Report as support for its waiver request. We only solicit comment on ATIS's specific waiver request, and on any alternate relief that may be appropriate.

16. We note that the Commission adopted an Initial Regulatory Flexibility Analysis (IRFA) and a Final Regulatory Flexibility Analysis (FRFA) in the proceeding that adopted the volume-control standard. The FRFA, among other things, analyzes the objectives and the economic effects on small entities of the requirement that ATIS asks us to waive. We seek comment on how the proposed waiver and the alternatives discussed herein could affect the IRFA and the FRFA previously adopted by the Commission. How could action in response to ATIS's petition ensure that we are minimizing burdens on small entities?

17. *Paperwork Reduction Act.* This document may seek comment on potential new or modified information

collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Federal Communications Commission.

Amy Brett,

Acting Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2023–06757 Filed 3–31–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1275; FR ID 134259]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 2, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1275.

Title: 3.7 GHz Band Relocation Payment Clearinghouse; 3.7 GHz Band Relocation Coordinator; 3.7 GHz Band Space Station Operators.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 3,007 respondents and 9,362 responses.

Estimated Time per Response: 0.5 hours–600 hours.

Frequency of Response: Recordkeeping requirement; on occasion, weekly, monthly, quarterly, semi-annual, and annual reporting requirements; 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 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309, and 316.

Total Annual Burden: 77,754 hours.

Annual Cost Burden: $10,705,353.

Needs and Uses: On February 28, 2020, in furtherance of the goal of releasing more mid-band spectrum into the market to support and enabling next-generation wireless networks, the Commission adopted a Report and Order, FCC 20–22, (3.7 GHz Report and Order), in which it reformed the use of the 3.7–4.2 GHz band, also known as the C-band. Currently, the 3.7–4.2 GHz band is allocated in the United States exclusively for non-Federal use on a primary basis for Fixed Satellite Service (FSS) and Fixed Service (FS). Domestically, space station operators use the 3.7–4.2 GHz band to provide downlink signals of various bandwidths to licensed transmit-receive, registered receive-only, and unregistered receive-only earth stations throughout the United States.

The 3.7 GHz Report and Order calls for the relocation of existing FSS operations in the band into the upper 200 megahertz of the band (4.0–4.2 GHz) and relocation of existing FS operations into other bands, making the lower 280 megahertz (3.7–3.98 GHz) available for flexible use throughout the contiguous United States through a Commission-administered public auction of overlay licenses that is scheduled to occur later this year. The Commission adopted a robust transition schedule to achieve a prompt relocation of FSS and FS operations so that a significant amount of spectrum could be made available quickly for next-generation wireless deployments. At the same time, the Commission sought to ensure the effective accommodation of relocated incumbent users. To facilitate an efficient transition, the Commission adopted a process for fully reimbursing existing operators for the costs of this relocation and for offering accelerated relocation payments to encourage a timely transition. Flexible-use licensees will be required to pay any accelerated relocation payments, if elected by eligible space station operators, and reimburse incumbent operators for their actual relocation costs associated with clearing the lower 300 megahertz of the band while ensuring continued operations for their customers. The 3.7 GHZ Report and Order establishes a Relocation Payment Clearinghouse to oversee the cost-related aspects of the transition and establishes a Relocation Coordinator to establish a timeline and take actions necessary to migrate and filter incumbent earth stations to ensure continued, uninterrupted service during and following the transition.

FCC staff will use this data to ensure that 3.7–4.2 GHz band stakeholders adopt practices and standards in their operations to ensure an effective, efficient, and streamlined transition. Status reports and other information required in this collection will be used to ensure that the process of clearing the lower portion of the band is efficient and timely, so that the spectrum can be auctioned for flexible-use service licenses and deployed for next-generation wireless services, including 5G, as quickly as possible. The collection is also necessary for the Commission to satisfy its oversight

responsibilities and/or agency specific/government-wide reporting obligations.

The Commission concluded in the 3.7 GHz Report and Order that a Relocation Payment Clearinghouse and Relocation Coordinator are critical to ensuring that the reconfiguration is administered in a fair, transparent manner and that the transition occurs as expeditiously as possible. To accomplish these goals most effectively, the Commission is seeking approval for a new information collection to collect information from the Relocation Payment Clearinghouse, the Relocation Coordinator, and incumbent space station operators and allow the Relocation Payment Clearinghouse and Relocation Coordinator to collection information to ensure that the band is transitioned effectively.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–06815 Filed 3–31–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1208; FR ID 134131]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 3, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1208.

Title: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit entities, not-for-profit institutions and State, local or Tribal governments.

Number of Respondents: 1,350 respondents; 3,597 responses.

Estimated Time per Response: .5 hours to 1 hour.

Frequency of Response: Third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Sections 1, 2, 4(i), 7, 201, 301, 303, and 309 of the Communications Act of 1934, as amended, and Sections 6003, 6213, and 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156, 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 303, 309, 1403, 1433, and 1455(a).

Total Annual Burden: 3,535 hours.

Total Annual Cost: None.

Needs and Uses: This information collection will be submitted for extension to the Office of Management and Budget (OMB) after the 60-day comment period to obtain the full three-year clearance. The Commission has not changed the collection, which includes disclosure requirements pertaining to Subpart U (previously subpart CC) of Part 1 of the Commission's rules.[1] Subpart CC was originally adopted to implement and enforce Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. Section 6409(a) provides, in part, that ''a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.'' 47 U.S.C. 1455(a)(1). In Subpart CC, the Commission adopted definitions of ambiguous terms, procedural requirements, and remedies to provide guidance to all stakeholders on the proper interpretation of the provision and to enforce its requirements, reducing delays in the review process for wireless infrastructure modifications and facilitating the rapid deployment of wireless infrastructure. The following are the information collection requirements in connection with Subpart U of Part 1 of the Commission's rules:

- 47 CFR 1.6100(c)(3)(i) (previously 1.40001(c)(3)(i))—To toll the 60-day review timeframe on grounds that an application is incomplete, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.
- 47 CFR 1.6100(c)(3)(iii) (previously 1.140001(c)(3)(iii))—Following a supplemental submission from the applicant, the State or local government will have 10 days to notify the applicant in writing if the supplemental submission did not provide the information identified in the State or local government's original notice delineating missing information. The timeframe for review is tolled in the case of second or subsequent notices of incompleteness pursuant to the procedures identified in paragraph (c)(3). Second or subsequent notices of

[1] On September 27, 2018, the Commission released a Declaratory Ruling and Third Report and Order that redesignated 47 CFR 1.40001 of Subpart CC as 47 CFR 1.6100 under Subpart U (State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities). *See* Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, FCC 18–133, 33 FCC Rcd. 3102 (2018). This change became effective January 14, 2019 upon publication in the **Federal Register**. *See* Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, 83 FR 51867 (2019).

incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

• 47 CFR 1.6100(c)(4) (previously 1.140001(c)(4))—If a request is deemed granted because of a failure to timely approve or deny the request, the deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted. These collections are necessary to effectuate the rule changes that implement and enforce the requirements of Section 6409(a).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–06813 Filed 3–31–23; 8:45 am]

BILLING CODE 6712–01–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket No. 103282023–1111–01]

Notice of Proposed Subaward Under a Council-Selected Restoration Component Award

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Notice.

SUMMARY: The Gulf Coast Ecosystem Restoration Council (Council) publishes notice of a proposed subaward from the U.S. Environmental Protection Agency (EPA) to the Woodlands Conservancy in the State of Louisiana, a nonprofit organization, for the purpose of habitat restoration in accordance with the Gulf of Mexico Conservation Enhancement Grant Program (GMCEGP) interagency agreement as approved in the Council's Initial Funded Priorities List (Initial FPL).

FOR FURTHER INFORMATION CONTACT: Please send questions by email to Joshua Easton at *joshua.easton@restorethegulf.gov* or (504) 252–7717.

SUPPLEMENTARY INFORMATION: Section 1321(t)(2)(E)(ii)(III) of the *RESTORE Act* (33 U.S.C. 1321(t)(2)(E)(ii)(III)) and Treasury's implementing regulation at 31 CFR 34.401(b) require that, for purposes of awards made under the Council-Selected Restoration Component, a State or Federal award recipient may make a grant or subaward to or enter into a cooperative agreement with a nongovernmental entity that equals or exceeds 10 percent of the total amount of the award only if certain notice requirements are met. Specifically, at least 30 days before the State or Federal recipient enters into such an agreement, the Council must publish in the **Federal Register** and deliver to specified Congressional committees the name of the recipient and subrecipient; a brief description of the activity, including its purpose; and the amount of the award. This notice satisfies the **Federal Register** requirement.

Description of Proposed Action

As specified in the Initial FPL, which is available on the Council's website at *https://www.restorethegulf.gov/council-selected-restoration-component/funded-priorities-list, RESTORE Act* funds in the amount of $2,472,917 will support the GMCEGP interagency agreement with EPA. EPA will provide a subaward in the amount of $259,766 to Woodlands Conservancy for the restoration and enhancement of habitat for resident & migratory birds in the Woodlands Conservancy lands located in St. Bernard Parish within the Barataria Basin, in the State of Louisiana.

Keala J. Hughes,

Director of External Affairs & Tribal Relations, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2023–06754 Filed 3–31–23; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis; Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS) announces the renewal of the charter of the Advisory Council for the Elimination of Tuberculosis (ACET).

FOR FURTHER INFORMATION CONTACT: Deron Burton, MD, JD, MPH (CAPT, United States Public Health Service), Designed Federal Officer, Advisory Council for the Elimination of Tuberculosis, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop US8–6, Atlanta, Georgia 30329–4027. Telephone: (404) 639–1506; Email: *DBurton@cdc.gov.*

SUPPLEMENTARY INFORMATION: CDC is providing notice under 5 U.S.C. 1001–1014. This charter has been renewed for a two-year period through March 15, 2025.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–06844 Filed 3–31–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health (ICSH); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS) announces the renewal of the charter of the Interagency Committee on Smoking and Health (ICSH).

FOR FURTHER INFORMATION CONTACT: Bob Vollinger, DrPh, MSPH, Designated Federal Officer, Interagency Committee on Smoking and Health, Centers for Disease Control and Prevention, Patriots Plaza 1, 395 E Street SW, Suite 9000, Washington, District of Columbia 20024. Telephone: (301) 605–5841; Email: *Bob.Vollinger@cdc.gov.*

SUPPLEMENTARY INFORMATION: CDC is providing notice under 5 U.S.C. 1001–1014. This charter has been renewed for a two-year period through March 20, 2025.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–06845 Filed 3–31–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3437–PN]

Medicare and Medicaid Programs: Application From the Accreditation Commission for Health Care for Continued Approval of its Ambulatory Surgical Center (ASC) Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with request for comment.

SUMMARY: This proposed notice acknowledges the receipt of an application from the Accreditation Commission for Health Care for continued recognition as a national accrediting organization for Ambulatory Surgical Centers that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by May 3, 2023.

ADDRESSES: In commenting, refer to file code CMS–3437–PN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3437–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3437–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

[Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.]

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Joy Webb, (410) 786–1667.

Erin Imhoff, (410) 786–2337.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

Ambulatory Surgical Centers (ASCs) are distinct entities that operate exclusively for the purpose of furnishing outpatient surgical services to patients. Under the Medicare program, eligible beneficiaries may receive covered services from an ASC, provided that certain requirements are met. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as an ASC. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 416 specify the conditions that an ASC must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for ASCs.

Generally, to enter into an agreement, an ASC must first be certified by a state survey agency (SA) as complying with the conditions or requirements set forth in part 416 of our Medicare regulations. Thereafter, the ASC is subject to regular surveys by a SA to determine whether it continues to meet these requirements.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS) approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we may deem that provider entities as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of the Department of Health and Human Services as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. The AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require AOs to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

Accreditation Commission for Health Care's (ACHC's) current term of approval for its ASC accreditation program expires September 22, 2023.

II. Approval of Deeming Organization

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a

complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of ACHC's request for continued approval of its ASC accreditation program. This notice also solicits public comment on whether ACHC's requirements meet or exceed the Medicare conditions for coverage (CfCs) for ASCs.

III. Evaluation of Deeming Authority Request

ACHC submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its ASC accreditation program. This application was determined to be complete on February 24, 2023. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of ACHC will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of ACHC's standards for ASCs as compared with Medicare's ASC CfCs.
- ACHC's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of ACHC's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ ACHC's processes and procedures for monitoring an ASC found out of compliance with ACHC program requirements. These monitoring procedures are used only when ACHC identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the SA monitors corrections as specified at § 488.9.

++ ACHC's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ ACHC's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of ACHC's staff and other resources, and its financial viability.

++ ACHC's capacity to adequately fund required surveys.

++ ACHC's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ ACHC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ ACHC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: March 28, 2023.

Evell J. Barco Holland,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–06778 Filed 3–31–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1798–NC]

Medicare and Medicaid Programs; Announcement of Application From a Hospital Requesting Waiver for Organ Procurement Service Area

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with request for comment.

SUMMARY: This notice acknowledges the receipt of an application from a hospital that has requested a waiver of statutory requirements that would otherwise require the hospital to enter into an agreement with its designated organ procurement organization (OPO). This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver.

DATES: *Comment date:* To be assured consideration, comments must be received at one of the addresses provided below, by June 2, 2023.

ADDRESSES: In commenting, refer to file code CMS–1798–NC.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1798–NC, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1798–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Caitlin Bailey, (410) 786–9768.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the

comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, pursuant to section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1)) and our regulations at 42 CFR 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, pursuant to section 1138(a)(1)(C) of the Social Security Act (the Act) and our regulations at 42 CFR 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every hospital must have an agreement only with its designated OPO to identify potential donors.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary of the Department of Health and Human Services (the Secretary) under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to submit comments during the 60-day comment period beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under section 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.308(e) and (f).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the comments received. During the review process, we may consult on an as-needed basis with the Health Resources and Services Administration's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver request and notify the hospital and the designated and requested OPOs.

III. Hospital Waiver Request

As permitted by § 486.308(e), the following hospital has requested a waiver to enter into an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located:

Atrium Medical Center, Middletown, Ohio, is requesting a waiver to work with: Life Connection of Ohio, 3661 Briarfield Boulevard, Suite 105, Maumee, OH 43537.

The Hospital's Designated OPO is: LifeCenter Organ Donor Network, 615 Elsinore Place, Suite 400, Cincinnati, OH 45202.

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Response to Comments

We will consider all comments we receive by the date specified in the **DATES** section of this document.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: March 27, 2023.

Evell J. Barco Holland,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–06764 Filed 3–31–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; Administration on Disabilities Evaluation of Technical Assistance for Independent Living Grantees OMB Control Number 0985—New

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that

the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the Administration on Disabilities Evaluation of Technical Assistance for Independent Living Grantees.

DATES: Submit written comments on the collection of information by May 3, 2023.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Peter Nye, Administration for Community Living, Washington, DC, 20201, (202) 795–7606, or *OILPPRAComments@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance.

The Administration for Community Living (ACL) is requesting approval to collect data for the Administration on Disabilities Evaluation of Technical Assistance for Independent Living Grantees.

ACL is currently engaged in an effort to better understand the implementation and effectiveness of the technical assistance (TA) provided to Independent Living (IL) grantees (Centers for Independent Living (CILs), statewide independent living councils (SILCs), and designated state entities (DSEs)).

The Rehabilitation Act of 1973, as amended authorizes the IL grantees to provide, expand, and improve independent living services for people with disabilities. Title VII, Part C authorizes funding to CILs.

Section 711A(a) requires ACL to reserve funds for training and TA to SILCs, and section 721(b)(1) requires ACL to reserve funds for training and TA to CILs.

TA efforts can support IL grantees in creating and maintaining effective organizations and services. TA, such as one-on-one TA, peer-to-peer mentoring, and webinars, is made available by the Independent Living Research Utilization (ILRU) program, the Association of Programs for Rural Independent Living (APRIL), the National Association of Statewide Independent Living Councils (NASILC), the National Council on IL (NCIL), and the TA centers that ACL funds, including the Disability Employment TA Center (DETAC) and the Federal Housing and Services Resource Center (HSRC) (referred to as AoD TA providers).

Although ACL monitors these AoD TA providers activities, the effectiveness of the TA approach has yet to be assessed. The goal of this data-collection effort is to provide ACL with IL-grantee feedback on the TA approach, including what elements are effective, that can be incorporated into a future TA strategy that is most beneficial to IL grantees. In this IC, ACL will be surveying a total of approximately 464 Part C CILs, DSEs, and SILCs. The web-based survey will be sent electronically to representatives from all Part C CILs, SILCs, and DSEs. ACL will provide the survey in alternative modes, such as by mail or telephone, on grantee request an alternative mode can be provided. Results from this survey will provide ACL with a better understanding of the implementation and effectiveness of the current TA approach from the perspective of IL grantees.

Comments in Response to the 60-Day Federal Register Notice

There were no public comments received during the 60-day FRN.

Estimated Program Burden: ACL estimates the burden of this collection of information as follows: The survey will be sent to approximately 464 representatives of CILs, SILCs, and DSEs. The approximate burden for web-based survey completion will be 25 minutes per respondent, which includes time to review the instructions, read the questions, and complete responses. This results in a total survey burden estimate of 11,600 minutes, which is 193.333 hours.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours *
Survey	464	1	0.41667	193.333
Total:	464	1	0.41667	193.333

Dated: March 28, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–06789 Filed 3–31–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–2628]

Marketing Submission Recommendations for a Predetermined Change Control Plan for Artificial Intelligence/Machine Learning-Enabled Device Software Functions; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Marketing Submission Recommendations for a Predetermined Change Control Plan for Artificial Intelligence/Machine Learning (AI/ML)-Enabled Device Software Functions.'' This draft guidance demonstrates FDA's commitment to developing innovative approaches to the regulation of machine learning-enabled medical devices and describes an approach that would often be the least burdensome and would support iterative improvement through modifications to machine learning-enabled device software functions

(herein referred to as ML–DSF) while continuing to ensure device safety and effectiveness. This draft guidance provides recommendations on the information to be included in a Predetermined Change Control Plan (PCCP) in a marketing submission for an ML–DSF. Such a plan describes the anticipated ML–DSF modifications and the associated methodology to implement those modifications, which would be reviewed in the marketing submission to ensure the continued safety and effectiveness of the device without necessitating additional marketing submissions for each modification described in the PCCP. This draft guidance is not final nor is it for implementation at this time.

DATES: Submit either electronic or written comments on the draft guidance by July 3, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–2628 for ''Marketing Submission Recommendations for a Predetermined Change Control Plan for Artificial Intelligence/Machine Learning (AI/ML)-Enabled Device Software Functions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Marketing Submission Recommendations for a Predetermined Change Control Plan for Artificial Intelligence/Machine Learning (AI/ML)-Enabled Device Software Functions'' 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: Brendan O'Leary, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5530, Silver Spring, MD 20993–0002, 301–796–6898; 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; Tala Fakhouri, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6330, Silver Spring, MD 20993–0002, 301–837–7407; or John Weiner, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5130, HFG–3, Silver Spring, MD 20993–0002, 301–796–8941.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has a longstanding commitment to developing and applying innovative approaches to the regulation of medical device software and other digital health technologies to ensure their safety and effectiveness. As technology continues to advance all facets of healthcare, software incorporating AI, and specifically the subset of AI known as ML, has become an important part of many medical devices. In April 2019, FDA published the ''Proposed Regulatory Framework for Modifications to Artificial Intelligence/Machine Learning (AI/ML)-Based Software as a Medical Device (SaMD)—Discussion Paper and Request for Feedback.'' [1]

[1] Available at *https://www.fda.gov/medical-devices/software-medical-device-samd/artificial-*

Continued

The discussion paper received a generous amount of stakeholder feedback that assisted in development of a tailored regulatory framework for AI/ML-enabled medical devices. This draft guidance, which was developed in response to stakeholder feedback, represents the Agency's next step in working to develop a tailored regulatory framework for ML–DSF. The discussion paper focused on a framework for SaMD only and introduced the term ''SaMD Pre-Specifications.'' In this draft guidance, the Agency is broadening the scope of the framework to include Software in a Medical Device (SiMD).

Additionally, section 3308 of the Consolidated Appropriations Act, 2023, enacted on December 29, 2022, added section 515C ''Predetermined Change Control Plans for Devices'' to the FD&C Act. Section 515C provides FDA with express authority to approve or clear PCCPs for devices requiring premarket approval or premarket notification. For example, section 515C provides that supplemental applications (section 515C(a)) and new premarket notifications (section 515C(b)) are not required for a change to a device that would otherwise require a premarket approval supplement or new premarket notification if the change is consistent with a PCCP previously approved or cleared by FDA. Section 515C also provides that FDA may require that a PCCP include labeling for safe and effective use of a device as such device changes pursuant to such plan, notification requirements if the device does not function as intended pursuant to such plan, and performance requirements for changes made under the plan. In this draft guidance, we provide recommendations on the marketing submission content for PCCPs, which are based on the statute and feedback obtained through our various interactions with stakeholders.

The purpose of this draft guidance is to promote the development of safe and effective medical devices that use ML models trained by ML algorithms. This draft guidance provides recommendations on the information to be included in a PCCP in a marketing submission for an ML–DSF. The PCCP describes the anticipated ML–DSF modifications and the associated methodology to implement those modifications, which would be reviewed in the marketing submission to assure the continued safety and effectiveness of the device without necessitating additional marketing submissions for each modification described in the PCCP.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Marketing Submission Recommendations for a Predetermined Change Control Plan for Artificial Intelligence/Machine Learning (AI/ML)-Enabled Device Software Functions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov, https://www.fda.gov/regulatory-information/search-fda-guidance-documents, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs.* Persons unable to download an electronic copy of ''Marketing Submission Recommendations for a Predetermined Change Control Plan for Artificial Intelligence/Machine Learning (AI/ML)-Enabled Device Software Functions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUI00020049 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; guidance; or FDA form	Topic	OMB Control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
860, subpart D	De Novo classification process	0910–0844
800, 801, and 809	Medical Device Labeling Regulations	0910–0485
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation	0910–0073

Dated: March 28, 2023.

Andi Lipstein Fristedt,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2023–06786 Filed 3–30–23; 8:45 am]

BILLING CODE 4164–01–P

intelligence-and-machine-learning-software-medical-device.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the National Advisory Committee on Rural Health and Human Services

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Secretary's National Advisory Committee on Rural Health and Human Services (NACRHHS) has scheduled a public meeting. Information about NACRHHS and the agenda for this meeting can be found on the NACRHHS website at *https://www.hrsa.gov/advisory-committees/rural-health/index.html.*

DATES:

- Wednesday, April 26, 2023, 9:00 a.m.–4:00 p.m. Pacific Time (PST);
- Thursday, April 27, 2023, 9:00 a.m.–4:45 p.m. PST; and
- Friday, April 28, 2023, 9:00 a.m.–11:30 a.m. PST.

ADDRESSES: This meeting will be held in the Jefferson and Cascade rooms at the Waypoint Hotel, 1415 NE 3rd St., Bend, Oregon 97701. The meeting will also be accessible to the public via Zoom. The meeting details are below.

Please use the following information to join the meeting:

- *https://us02web.zoom.us/j/87269507751?pwd=WHczdFBzL29TL0RZUmw1QVZMS0hLUT09;* Webinar ID: 872 6950 7751; Passcode: 256752.

FOR FURTHER INFORMATION CONTACT: Sahira Rafiullah, Executive Secretary of NACRHHS, 5600 Fishers Lane, Rockville, Maryland 20857; 240–316–5874; or *srafiullah@hrsa.gov.*

SUPPLEMENTARY INFORMATION: NACRHHS provides advice and recommendations to the Secretary of Health and Human Services on policy, program development, and other matters of significance concerning both rural health and rural human services. At this meeting, NACRHHS will discuss the Maternal, Infant, and Early Childhood Home Visiting Program. Members of the public will have the opportunity to provide comments. Public participants wishing to provide oral comments must submit a written version of their statement at least 3 business days in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time permits. Public participants wishing to offer a written statement should send it to Sahira Rafiullah, using the contact information above, at least 3 business days prior to the meeting. Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Sahira Rafiullah at the address and phone number listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–06828 Filed 3–31–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Rural Communities Opioid Response Program Performance Measures, OMB No. 0906–0044, Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than June 2, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the acting HRSA Information Collection Clearance Officer, at (301) 594–4394.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Rural Communities Opioid Response Program (RCORP) Performance Measures, OMB No. 0906–0044, Revision

Abstract: HRSA administers RCORP, which is authorized by section 711(b)(5) of the Social Security Act (42 U.S.C. 912(b)(5)) and is a multi-initiative program that aims to: (1) support treatment for and prevention of substance use disorder (SUD), including opioid use disorder (OUD); and (2) reduce morbidity and mortality associated with SUD, to include OUD, by improving access to and delivering prevention, treatment, and recovery support services to high-risk rural communities. To support this purpose, RCORP grant initiatives include:

- RCORP-Implementation grants to fund established networks and consortia to deliver SUD/OUD prevention, treatment, and recovery activities in high-risk rural communities;
- RCORP-Neonatal Abstinence Syndrome grants to reduce the incidence and impact of Neonatal Abstinence Syndrome in rural communities by improving systems of care, family supports, and social determinants of health;
- RCORP-Psychostimulant Support grants to strengthen and expand prevention, treatment, and recovery services for individuals in rural areas who misuse psychostimulants; to enhance their ability to access treatment and move toward recovery;
- RCORP-Medication Assisted Treatment (MAT) Access grants aim to establish new access points in rural facilities where none currently exist; and
- RCORP-Behavioral Health Care support grants aim to expand access to and quality of behavioral health care services at the individual-, provider-, and community-levels.
- Note that additional grant initiatives may be added pending fiscal year 2024 and future fiscal year appropriations.

HRSA currently collects information about RCORP grants using approved performance measures. HRSA developed separate performance measures for RCORP's new MAT Access and Behavioral Health Care Support grants and seeks OMB approval for the new collection.

Need and Proposed Use of the Information: Due to the growth in the number of grant initiatives included within RCORP, as well as emerging SUD and other behavioral health trends in rural communities, HRSA is submitting

a revised ICR that includes measures for RCORP's new MAT Access and Behavioral Health Care Support grants.

For this program, performance measures were developed to provide data on each RCORP initiative and enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993. These measures cover the principal topic areas of interest to the Federal Office of Rural Health Policy, including: (a) provision of, and referral to, rural behavioral health care services, including SUD prevention, treatment and recovery support services; (b) behavioral health care, including SUD prevention, treatment, and recovery, process and outcomes; (c) education of health care providers and community members; (d) emerging trends in rural behavioral health care needs and areas of concern; and (e) consortium strength and sustainability. All measures will speak to the Federal Office of Rural Health Policy's progress toward meeting the goals set.

Likely Respondents: The respondents will be recipients of the RCORP grants.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

The only revisions to the approved information collection are the addition of measures for the RCORP-MAT Access and RCORP-Behavioral Health Care Support grants. Since the performance measures for these grants are substantially different than other RCORP grants, HRSA calculated burden hours separately.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent (annually)	Total responses	Average burden per response (in hours)	Total burden hours
Rural Communities Opioid Response Program—Implementation/Neonatal Abstinence Syndrome	290	2	580	1.24	719.20
Rural Communities Opioid Response Program—Psychostimulant Support	15	1	15	1.30	19.50
Rural Communities Opioid Response Program—MAT Access—***NEW****	11	1	11	1.95	21.45
Rural Communities Opioid Response Program—Behavioral Health Care Support—***NEW***	58	1	58	2.02	117.16
Total	374		664		877.31

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–06804 Filed 3–31–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity.

Date: May 2, 2023.

Time: 12:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7353, Bethesda, MD 20892, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 28, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–06772 Filed 3–31–23; 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; Genetic Disease Therapy.

Date: April 17, 2023.

Time: 8:00 a.m. to 11:00 a.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: Karobi Moitra, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–6893, *karobi.moitra@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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 28, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–06770 Filed 3–31–23; 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: Genes, Genomes and Genetics II.

Date: April 6, 2023.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Linda Wagner Jurata, Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–8032, *linda.jurata@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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 28, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–06773 Filed 3–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of 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 cooperative agreement applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the cooperative agreement applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Research Networks to Promote Multidisciplinary Mechanistic Studies on Music-Based Interventions for Pain or Alzheimer's Disease and Alzheimer's Disease Related Dementias (AD/ADRD) (U24 Clinical Trial Optional).

Date: April 7, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: NCCIH, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shiyong Huang, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20817, *shiyong.huang@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: March 28, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–06767 Filed 3–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Music and Health review meeting.

Date: May 1–2, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Abhignya Subedi, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3208, MSC 9529, Rockville, MD 20852, 301–480–6938, *abhi.subedi@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the

Neurosciences, National Institutes of Health, HHS.)

Dated: March 28, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–06824 Filed 3–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: May 5, 2023.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Maryam Rohani, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20852, (301) 761–6656, *maryam.rohani@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 28, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–06820 Filed 3–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Human Genome Research Institute Special Emphasis Panel, March 15, 2023, 10:00 a.m. to March 15, 2023, 2:00 p.m., NHGRI, 6700B, Rockledge Dr., Bethesda, MD, 20817 which was published in the **Federal Register** on March 3, 2023, FR Doc 2023–02195, 88 FR 7098.

Amendment to change the meeting date from March 15, 2023 to April 11, 2023. The meeting is closed to the public.

Dated: March 28, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–06771 Filed 3–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS

Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190. (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823. (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130. (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630. (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845. (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085. Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2023–06810 Filed 3–31–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2325]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood

Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before July 3, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2325, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Miami County, Kansas and Incorporated Areas Project: 21–07–0026S Preliminary Date: November 29, 2022	
City of Osawatomie	City Hall, Code Enforcement Office, 439 Main Street, Osawatomie, KS 66064.
Unincorporated Areas of Miami County	Miami County Administration Building, 201 South Pearl Street, Suite 201, Paola, KS 66071.
Daviess County, Kentucky and Incorporated Areas Project: 16–04–8580S Preliminary Dates: November 12, 2020 and July 25, 2022	
City of Owensboro	Public Works, 1410 West 5th Street, Owensboro, KY 42301.
Unincorporated Areas of Daviess County	Daviess County Courthouse, 212 Saint Ann Street, Owensboro, KY 42303.

[FR Doc. 2023–06834 Filed 3–31–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama:					
Madison (FEMA Docket No.: B–2314).	City of Huntsville (22–04–4159P).	The Honorable Thomas Battle, Jr., Mayor, City of Huntsville, 308 Fountain Circle, Huntsville, AL 35801.	City Hall, 308 Fountain Circle, Huntsville, AL 35801.	Feb. 13, 2023	010153
Madison (FEMA Docket No.: B–2314).	Unincorporated areas of Madison County (22–04–4159P).	The Honorable Dale Strong, Chair, Madison County Commission, 100 North Side Square, Huntsville AL 35801.	Madison County Engineering Department, 266–C Shields Road, Huntsville, AL 35811.	Feb. 13, 2023	010151
Colorado: Jefferson (FEMA Docket No.: B–2299).	Unincorporated areas of Jefferson County (21–08–1089P).	The Honorable Andy Kerr, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	Mar. 3, 2023	080087
Florida:					
Hillsborough (FEMA Docket No.: B–2299).	Unincorporated areas of Hillsborough County (21–04–3923P).	Bonnie Wise, Hillsborough County Administrator, 601 East Kennedy Boulevard, 26th Floor, Tampa, FL 33602.	Hillsborough County Center, 601 East Kennedy Boulevard, 22nd Floor, Tampa, FL 33602.	Mar. 2, 2023	120112
Miami-Dade (FEMA Docket No.: B–2304).	City of Miami (22–04–3431P).	The Honorable Francis Suarez, Mayor, City of Miami, 444 Southwest 2nd Avenue, Miami, FL 33130.	Building Department, 444 Southwest 2nd Street, 4th Floor, Miami, FL 33130.	Mar. 6, 2023	120650
Monroe (FEMA Docket No.: B–2299).	Unincorporated areas of Monroe County (22–04–5380P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Mar. 13, 2023	125129

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Orange (FEMA Docket No.: B–2299).	Unincorporated areas of Orange County (22–04–2597P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Public Works Department, Stormwater Management Division, 4200 South John Young Parkway, Orlando, FL 32839.	Mar. 13, 2023	120179
Pasco (FEMA Docket No.: B–2299).	Unincorporated areas of Pasco County (22–04–4232P).	Dan Biles, Pasco County Administrator, 8731 Citizens Drive, New Port Richey, FL 34654.	Pasco County Administration Building, 8731 Citizens Drive, New Port Richey, FL 34654.	Mar. 6, 2023	120230
Polk (FEMA Docket No.: B–2299).	Unincorporated areas of Polk County (21–04–3985P).	Bill Beasley, Manager, Polk County, 330 West Church Street, Drawer BC01, Bartow, FL 33830.	Polk County Administration Building, 330 West Church Street, Bartow, FL 33830.	Mar. 2, 2023	120261
Georgia: Bryan (FEMA Docket No.: B–2299).	City of Pembroke (22–04–0157P).	The Honorable Judy B. Cook, Mayor, City of Pembroke, P.O. Box 130, Pembroke, GA 31321.	Administration Department, 353 North Main Steet, Pembroke, GA 31321.	Mar. 1, 2023	130017
Kentucky: Warren (FEMA Docket No.: B–2314).	City of Bowling Green (22-04-3008P).	The Honorable Todd Alcott, Mayor, City of Bowling Green, 1001 College Street, Bowling Green, KY 42101.	Planning Commission, 922 State Street, Suite 200, Bowling Green, KY 42101.	Mar. 13, 2023	210219
Massachusetts: Plymouth (FEMA Docket No.: B–2299).	Town of Wareham (22–01–0708P).	Derek Sullivan, Town of Wareham Administrator, 54 Marion Road, Wareham, MA 02571.	Town Hall, 54 Marion Road, Wareham, MA 02571.	Mar. 3, 2023	255223
North Carolina:					
Cumberland (FEMA Docket No.: B–2299).	City of Fayetteville (22–04–2695P).	The Honorable Mitch Colvin, Mayor, City of Fayetteville, 433 Hay Street, Fayetteville, NC 28301.	Zoning Department, 433 Hay Street, Fayetteville, NC 28301.	Feb. 27, 2023	370077
Henderson (FEMA Docket No.: B–2321)	Village of Flat Rock (22–04–1155P).	The Honorable Nick Weedman, Mayor, Village of Flat Rock, P.O. Box 1288, Flat Rock, NC 28731.	Planning Department, 110 Village Center Drive, Flat Rock, NC 28731.	Mar. 10, 2023	370565
Rowan (FEMA Docket No.: B–2314).	City of Salisbury (21–04–5312P).	The Honorable Karen Alexander, Mayor, City of Salisbury, 132 North Main Street, Salisbury, NC 28144.	City Hall, 217 South Main Street, Salisbury, NC 28144.	Mar. 17, 2023	370215
Wake (FEMA Docket No.: B–2314).	Town of Fuquay-Varina (21–04–3215P).	The Honorable Blake Massengill, Mayor, Town of Fuquay-Varina, 134 North Main Street, Fuquay-Varina, NC 27526.	Engineering Department, 134 North Main Street, Fuquay-Varina, NC 27526.	Jan. 17, 2023	370239
Wake (FEMA Docket No.: B–2314).	Town of Holly Springs (21–04–0922P).	The Honorable Sean Mayefskie, Mayor, Town of Holly Springs, P.O. Box 8, Holly Springs, NC 27540.	Engineering Department, 128 South Main Street, Holly Springs, NC 27540.	Mar. 4, 2023	370403
Texas:					
Caldwell (FEMA Docket No.: B–2299).	City of Lockhart (22–06–0376P).	Steve Lewis, Manager, City of Lockhart, P.O. Box 239, Lockhart, TX 78644.	City Hall, 308 West San Antonio Street, Lockhart, TX 78644.	Mar. 10, 2023	480095
Caldwell (FEMA Docket No.: B–2299).	Unincorporated areas of Caldwell County (22–06–0376P).	The Honorable Hoppy Haden, Caldwell County Judge, 110 South Main Street, Room 101, Lockhart, TX 78644.	Caldwell County Main Historic Courthouse, 110 South Main Street, Room 201, Lockhart, TX 78644.	Mar. 10, 2023	480094
Collin (FEMA Docket No.: B–2299).	City of Plano (22–06–0995P).	The Honorable John Muns, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	City Hall, 1520 K Avenue, Plano, TX 75074.	Mar. 6, 2023	480140
Ellis (FEMA Docket No.: B–2304).	City of Venus (22–06–0620P).	The Honorable James L. Burgess, Mayor, City of Venus, 700 West U.S. Highway 67, Venus, TX 76084.	Public Works and Water/Sewer Department, 700 West U.S. Highway 67, Venus, TX 76084.	Mar. 6, 2023	480883
Ellis (FEMA Docket No.: B–2304).	City of Waxahachie (22–06–0378P).	The Honorable David Hill, Mayor, City of Waxahachie, P.O. Box 757, Waxahachie, TX 75168.	Public Works and Engineering Department, 401 South Roger Street, Waxahachie, TX 75165.	Mar. 13, 2023	480211
Ellis (FEMA Docket No.: B–2304).	Unincorporated areas of Ellis County (22–06–0378P).	The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County Engineering Department, 109 South Jackson Street, Waxahachie, TX 75165.	Mar. 13, 2023	480798
Ellis (FEMA Docket No.: B–2304).	Unincorporated areas of Ellis County (22–06–0620P).	The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County Engineering Department, 109 South Jackson Street, Waxahachie, TX 75165.	Mar. 6, 2023	480798
Montgomery (FEMA Docket No.: B–2299).	City of Conroe (22–06–1057P).	The Honorable Jody Czajkoski, Mayor, City of Conroe, P.O. Box 3066, Conroe, TX 77305.	City Hall, 700 Metcalf Street, Conroe, TX 77301.	Mar. 2, 2023	480484
Montgomery (FEMA Docket No.: B–2299).	City of Shenandoah (22–06–1057P).	The Honorable John Escoto, Mayor, City of Shenandoah, 29955 I-45 North, Shenandoah, TX 77381.	City Hall, 29955 I-45 North, Shenandoah, TX 77381.	Mar. 2, 2023	481256

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Montgomery (FEMA Docket No.: B–2299).	Unincorporated areas of Montgomery County (22–06–1057P).	The Honorable Mark J. Keough, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County Commissioners Court Building, 501 North Thompson Street, Suite 100, Conroe, TX 77381.	Mar. 2, 2023	480483
Travis (FEMA Docket No.: B–2304).	City of Austin (22–06–1763P).	Spencer Cronk, Manager, City of Austin, P.O. Box 1088, Austin, TX 78767.	Watershed Engineering Division, 505 Barton Springs Road, 12th Floor, Austin, TX 78704.	Mar. 6, 2023	480624
Virginia: Loudoun (FEMA Docket No.: B–2299).	Unincorporated areas of Loudoun County (22–03–0302P).	Tim Hemstreet, Loudoun County Administrator, 1 Harrison Street Southeast, 5th Floor, Leesburg, VA 20175.	Loudoun County Government Center, 1 Harrison Street Southeast, 3rd Floor, MSC #60, Leesburg, VA 20175.	Mar. 6, 2023	510090

[FR Doc. 2023–06832 Filed 3–31–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7067–N–01; OMB Control No. 2529–0033]

60-Day Notice of Proposed Information Collection Comment Request Fair Housing Initiatives Program Grant Application and Monitoring Reports

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO), HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 2, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@HUD.gov* or telephone 202–402–3400. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Fair Housing Initiatives Program.

OMB Approval Number: 2529–0033.

Type of Request: Extension of currently approved collection.

Form Number: HUD 904 A, B and C, SF–425, SF–424, SF–LLL, HUD–2880, HUD–2990, HUD–2993, HUD–424CB, HUD–424–CBW, HUD2994–A, HUD–96010, and HUD–27061.

Description of the need for the information and proposed use: The collection is needed to allow the Fair Housing Initiatives Program (FHIP) to request information necessary to complete a grant application package during the Notice of Funding Opportunity (NOFO) grant application process. The collection is used to assist the Department in effectively evaluating grant application packages to select the highest ranked applications for funding to carry out fair housing enforcement and/or education and outreach activities under the following FHIP initiatives: Private Enforcement, Education and Outreach, and Fair Housing Organization. The collection is also needed for the collection of post-award reports and other information used to monitor grants and report grant outcomes. Information collected from quarterly and final progress reports and enforcement logs will enable the Department to evaluate the performance of agencies that receive funding and determine the impact of the program on preventing and eliminating discriminatory housing practices.

Respondents: Fair Housing Enforcement Organizations, Fair Housing organizations, non-profit and other organizations eligible to apply for FHIP funding.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Application Development	400	1	400	71.20	28,480	$30.00	$854,400
Quarterly Report	142	4	568	19	10,792	30.00	323,760
Supplemental Outcome Report	142	1	142	19	2,698	30.00	80,940
Enforcement Log	98	4	392	7	2,744	30.00	82,320
Final Report	142	1	142	20	2,840	30.00	85,200
Recordkeeping	142	1	142	21	2,982	30.00	89,460
Total	1,043	12	1,786	157.20	50,536	30.00	1,516,080

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Demetria L. McCain,

Principal Deputy Assistant Secretary, Fair Housing and Equal Opportunity.

[FR Doc. 2023–06768 Filed 3–31–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7066–N–04; OMB Control No. 2506–0199]

60-Day Notice of Proposed Information Collection: CoC Recordkeeping

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 2, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Written comments and recommendations for the proposed information collection can 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. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5535 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7262, Washington, DC 20410; telephone (202) 708–5015 (This is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Recordkeeping for HUD's Continuum of Care Program.

OMB Approval Number: 2506–0199.

Type of request: Revision.

Form Number: HUD 4150.

Description of the need for the information and proposed use: This submission is to request an extension of an Existing Collection in use without an OMB Control Number for the Recordkeeping for HUD's Continuum of Care Program. Continuum of Care program recipients will be expected to implement and retain the information collection for the recordkeeping requirements. The statutory provisions and implementing interim regulations govern the Continuum of Care Program recordkeeping requirements for recipient and subrecipients and the standard operating procedures for ensuring that Continuum of Care Program funds are used in accordance with the program requirements. To see the regulations for the new CoC program and applicable supplementary documents, visit HUD's Homeless Resource Exchange at *https://www.onecpd.info/resource/2033/hearth-coc-program-interim-rule/.*

Respondents: Continuum of Care program recipients and subrecipients.

Estimated Number of Respondents: The CoC record keeping requirements include 45 distinct activities. Each activity requires a different number of respondents ranging from 10 to 350,000. There are 366,500 unique respondents.

Estimated Number of Response: 2,485,300.

Frequency of Response: Each activity has a unique frequency of response, ranging from once to 200 times annually.

Average Hours per Response: Each activity also has a unique associated number of hours of response, ranging from 15 minutes to 180 hours.

Total Estimated Burdens: The total number of hours needed for all reporting is 1,600,385.50 hours.

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours	Hourly rate	Burden cost per instrument
A	B	C	D	E	F		
§ 578.5(a) Establishing the CoC	395	1	395	8	3,160.00	45.14	142,642
§ 578.5(b) Establishing the Board	395	1	395	5	1,975.00	45.14	89,151.50
§ 578.7(a)(1) Hold CoC Meetings	395	2	790	4	3,160.00	45.14	142,642.40
§ 578.7(a)(2) Invitation for New Members	395	1	395	1	395	45.14	17,830.30
§ 578.7(a)(4) Appoint committees	395	2	790	0.5	395	45.14	17,830.30
§ 578.7(a)(5) Governance charter	395	1	395	7	2,765.00	45.14	124,812.10
§ 578.7(a)(6) and (7) Monitor performance and evaluation	395	1	395	9	3,555.00	45.14	160,472.70

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours	Hourly rate	Burden cost per instrument
A	B	C	D	E	F		
§ 578.7(a)(8) Centralized or coordinated assessment system	395	1	395	8	3,160.00	45.14	142,642.40
§ 578.7(a)(9) Written standards	395	1	395	5	1,975.00	45.14	89,151.50
§ 578.7(b) Designate HMIS	395	1	395	10	3,950.00	45.14	178,303
§ 578.9 Application for funds	395	1	395	180	71,100.00	45.14	3,209,454
§ 578.11(c) Develop CoC plan	395	1	395	9	3,555	45.14	160,472.70
§ 578.21(c) Satisfying conditions	7,000	1	7,000	4	28,000.00	45.14	1,263,920
§ 578.23 Executing grant agreements	7,000	1	7,000	1	7,000.00	45.14	315,980
§ 578.35(b) Appeal—solo	10	1	10	4	40	45.14	1,805.60
§ 578.35(c) Appeal—denied or decreased funding	15	1	15	1	15	45.14	677.10
§ 578.35(d) Appeal—competing CoC	10	1	10	5	50	45.14	2,257.00
§ 578.35(e) Appeal—Consolidated Plan certification	5	1	5	2	10	45.14	451.4
§ 578.49(a)—Leasing exceptions	5	1	5	1.5	7.5	45.14	338.55
§ 578.65 HPC Standards	20	1	20	10	200	45.14	9,028
§ 578.75(a)(1) State and local requirements—appropriate service provision	7,000.00	1	7,000.00	0.5	3,500.00	45.14	157,990.00
§ 578.75(a)(1) State and local requirements—housing codes	20	1	20	3	60	45.14	2,708.40
§ 578.75(b) Housing quality standards	72,800.00	2	145,600.00	1	145,600.00	45.14	6,572,384.00
§ 578.75(b) Suitable dwelling size	72,800.00	2	145,600.00	0.08	11,648.00	45.14	525,790.72
§ 578.75(c) Meals	70,720.00	1	70,720.00	0.5	35,360.00	45.14	1,596,150.40
§ 578.75(e) Ongoing assessment of supportive services	8,000.00	1	8,000.00	1.5	12,000.00	45.14	541,680.00
§ 578.75(f) Residential supervision	6,600.00	3	19,800.00	0.75	14,850.00	45.14	670,329.00
§ 578.75(g) Participation of homeless individuals	11,500.00	1	11,500.00	1	11,500.00	45.14	519,110.00
§ 578.75(h) Supportive service agreements	3,000.00	100	300,000.00	0.5	150,000.00	45.14	6,771,000.00
§ 578.77(a) Signed leases/occupancy agreements	104,000.00	2	208,000.00	1	208,000.00	45.14	9,389,120.00
§ 578.77(b) Calculating occupancy charges	1,840.00	200	368,000.00	0.75	276,000.00	45.14	12,458,640.00
§ 578.77(c) Calculating rent	2,000.00	200	400,000.00	0.75	300,000.00	45.14	13,542,000.00
§ 578.81(a) Use restriction	20	1	20	0.5	10	45.14	451.40
§ 578.91(a) Termination of assistance	395	1	395	4	1,580	45.14	71,321.20
§ 578.91(b) Due process for termination of assistance	4,500.00	1	4,500.00	3	13,500.00	45.14	609,390.00
§ 578.95(d)—Conflict-of-Interest exceptions	10	1	10	3	30	45.14	1,354.20
§ 578.103(a)(3) Documenting homelessness	300,000.00	1	300,000.00	0.25	75,000.00	45.14	3,385,500.00
§ 578.103(a)(4) Documenting at risk of homelessness	10,000.00	1	10,000.00	0.25	2,500.00	45.14	112,850.00
§ 578.103(a)(5) Documenting imminent threat of harm	200	1	200	0.5	100	45.14	4,514.00
§ 578.103(a)(7) Documenting program participant records	350,000.00	6	350,000	0.25	87,500	45.14	3,949,750.00
§ 578.103(a)(7) Documenting case management	8,000.00	12	96,000.00	1	96,000.00	45.14	4,333,440.00
§ 578.103(a)(13) Documenting faith-based activities	8,000.00	1	8,000.00	1	8,000.00	45.14	361,120.00
§ 578.103(b) Confidentiality procedures	11,500.00	1	11,500.00	1	11,500.00	45.14	519,110.00
§ 578.105(a) Grant/project changes—UFAs	20	2	40	2	80	45.14	3,611.20
§ 578.105(b) Grant/project changes—multiple project applicants	800	1	800	2	1,600.00	45.14	72,224.00
Total	1,072,530	.....	2,485,300	.....	1,600,385.50	.....	72,241,401.07

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2023–06761 Filed 3–31–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7075–N–02; OMB Control No. 2528–NEW]

60-Day Notice of Proposed Information Collection: Evaluation of Public Housing Agencies (PHA) Coronavirus Aid, Relief, and Economic Security (CARES) Act Waivers: PHA Interviews Data Collection

AGENCY: Office of Policy Development and Research, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 2, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can 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. Interested persons are also invited to submit comments

regarding this proposal by name and/or OMB Control Number and can be sent to: Anna Guido, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–5535 (this is not a toll-free number) or email Anna Guido at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Anna Guido, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna Guido at *Anna.Guido@hud.gov,* telephone 202–402–5535 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Evaluation of Public Housing Agencies (PHA) Coronavirus Aid, Relief, and Economic Security (CARES) Act Waivers: PHA Staff Interviews Data Collection.

OMB Approval Number: 2528–Pending.

Type of Request: New data collection.

Form Number: N/A.

Description of the need for the information and proposed use: The purpose of this proposed information collection is to conduct semi-structured interviews with PHA staff and stakeholders to understand why and how PHAs utilized waivers offered by the CARES Act, and how these waivers impacted PHA operations and assisted households.

In early 2020, Congress passed and the President signed the CARES Act. The landmark statute was a response to the COVID–19 pandemic and contained many provisions related to mitigating its worst effects. Included were provisions that gave the U.S. Department of Housing and Urban Development (HUD) statutory and regulatory waiver authority to help programs adapt and operate in the changing circumstances and to encourage the continuity of critical PHA operations in order to support PHA residents and tenants.

The *Evaluation of Public Housing Agencies Coronavirus Aid, Relief, and Economic Security Act (CARES) Waivers* is a mixed-method and multi-phase study to understand how PHAs implemented the CARES Act waivers and the utility of these waivers on general operations and assisted households. The insights from this study will also help inform future policy and program implications related to the waivers offered by the CARES Act.

2M will conduct semi-structured interviews with PHA stakeholders from a purposive sample of 50 PHAs. This includes interviews with three interview respondent groups (PHA leadership, PHA operations staff, and members of Resident Advisory Boards) from 45 PHAs that adopted waivers offered by the CARES Act (a total of 135 interviews with 135 respondents), and one group interview with PHA leadership and operations staff from five PHAs that did not adopt any waivers offered by the CARES Act (a total of 5 interviews with 10 respondents). Collectively, 2M plans to conduct a total of 140 interviews across 145 respondents. This data collection effort is expected to last five months.

This **Federal Register** Notice provides an opportunity to comment on the data collection instruments and associated materials to be administered to PHA staff and stakeholders.

Respondents:

At PHAs that adopted a waiver: PHA leadership, PHA operations staff (such as outreach staff or other relevant staff with knowledge about the impact of the CARES Act waivers), and members of Resident Advisory Boards.

At PHAs that did not adopt a waiver: PHA leadership and PHA operations staff.

Estimated Number of Respondents: 145 respondents.

Frequency of Response: Once.

Average Hours per Response: Completion of each semi-structured interview is expected to last an average of 1 hour.

Total Estimated Burden Hours: 145.0 hours.

ANNUALIZED BURDEN TABLE [1]

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
PHAs that Adopted a Waiver							
Interview of PHA Leadership	45	1	1	1.0	45.0	$77.58	$3,491.10
Interview of PHA Operations Staff	45	1	1	1.0	45.0	29.89	1,345.05
Interview of Members of Resident Advisory Board	45	1	1	1.0	45.0	59.78	2,690.10
PHAs that Did Not Adopt a Waiver							
Interview of PHA Leadership and Staff (combined)	10	1	1	1.0	10.0	53.74 [2]	537.40
Total	145				145.0		8,063.65

[1] To estimate the hourly cost per respondent, the research team used the average hourly compensation (wages and benefits) for private workers in Service-Providing Industry according to Table 4 on page 8 in the Bureau of Labor Statistics' Employer Costs for Employee Compensation Survey from September 2022 (*https://www.bls.gov/news.release/pdf/ecec.pdf*). The hourly cost for PHA leadership was assumed to be those who are in Management, business, and financial occupations. The hourly cost for PHA staff was assumed to be those in Office and administrative support occupations. The hourly cost for members of Resident Advisory Boards was assumed to be those in Professional and related occupations.

[2] The average hourly cost per response for the combined interviews of PHA Leadership and Staff was calculated as the average for the hourly rate for PHA Leadership ($77.58) and PHA Staff ($29.89) [($77.58+$29.89)/2].

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected, and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2023–06756 Filed 3–31–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–ES–2023–0050; FF09E41000–234–FXES111609C0000; OMB Control Number 1018–0177]

Agency Information Collection Activities; Policy Regarding Voluntary Prelisting Conservation Actions

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, without change, an information collection.

DATES: Interested persons are invited to submit comments on or before June 2, 2023.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (reference ''1018–0177'' in the subject line of your comment):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–ES–2023–0050.
- *Email: Info_Coll@fws.gov.*
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

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 of 1995 and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity 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.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. 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. 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 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 Service is charged with implementing the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). The goal of the Act is to provide a means to conserve the ecosystems upon which listed species depend and a program for listed species conservation. Through our Candidate Conservation program, we encourage the public to take conservation actions for species prior to them being listed under the Act. Doing so may result in precluding the need to list a species, may result in listing a species as threatened instead of endangered, or, if a species becomes listed, may provide the basis for its recovery and eventual removal from the protections of the Act.

This policy provides incentives to landowners, government agencies, and others to carry out voluntary conservation actions for unlisted species. It allows the use of any benefits to the species from voluntary conservation actions undertaken prior to listing under the Act—by the person who undertook such actions or by third parties—to mitigate or offset the detrimental effects of other actions undertaken after listing. The policy requires participating States to track the voluntary conservation actions and provide this information to us on an annual basis. We require this information in order to provide the entities that have taken the conservation actions with proper credit that can later be used to mitigate for any detrimental actions they take after the species is listed.

We plan to collect the following information:

- Description of the prelisting conservation action being taken.
- Location of the action (does not include a specific address).
- Name of the entity taking the action and their contact information (email address only).
- Frequency of the action (ongoing for X years, or one-time implementation)

and an indication if the action is included in a State Wildlife Action Plan.

• Any transfer to a third party of the mitigation or compensatory measure rights.

Each State that chooses to participate will collect this information from landowners, businesses and organizations, and Tribal, Federal, and local governments that wish to receive credit for voluntary prelisting conservation actions. States may collect this information via an Access database, Excel spreadsheet, or other database of their choosing and submit the information to the Fish and Wildlife Service (via email) annually. States will use this information to calculate the number of credits that the entity taking the conservation action will receive and will keep track of the credits and notify the entity of how much credit they have earned. The States will report the number of credits to the Service, and we will determine how many credits are needed by the entity to mitigate or offset the detrimental effects of other actions they take after the species is listed (assuming it is listed).

Additionally, on February 9, 2023, the Service published a proposed rule (RIN 1018–BF99; 88 FR 8380) to clarify the appropriate use of enhancement of survival permits and incidental take permits; clarify our authority to issue these permits for non-listed species without also including a listed species; simplify the requirements for enhancement of survival permits by combining safe harbor agreements and candidate conservation agreements with assurances into one agreement type, and include portions of our five-point policies for safe harbor agreements, candidate conservation agreements with assurances, and habitat conservation plans in the regulations to reduce uncertainty. We also propose to make technical and administrative revisions to the regulations.

The goal of the rule is to reduce the time it takes for applicants to prepare and develop the required supporting documents, thus accelerating conservation implementation. The proposed regulatory changes are intended to reduce costs and time associated with negotiating and developing the required documents to support the applications. We anticipate that these improvements will encourage more individuals and companies to engage in these voluntary programs, thereby generating greater conservation results overall.

When the Service finalizes this rule, anticipated in late 2023, candidate conservation agreements with assurances (CCAAs) and safe harbor agreements will no longer be in place, and will be combined into one agreement type—conservation benefit agreements (CBAs). We will update the Policy Regarding Voluntary Prelisting Conservation Actions to replace all references to CCAAs with references to CBAs (for non-listed species). We do not anticipate this update to the policy to impact currently approved information collections.

Title of Collection: Policy Regarding Voluntary Prelisting Conservation Actions.

OMB Control Number: 1018–0177.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for new submissions, ongoing for recordkeeping requirements, and annually for reporting requirements.

Total Estimated Annual Nonhour Burden Cost: None.

Information collection requirement	Annual number of respondents	Average number of responses each	Annual number of responses	Average completion time per response (hours)	Estimated annual burden hours *
Amendments to Conservation Strategy					
Government	1	1	1	16	16
Annual Reports					
Government	1	1	1	20	20
Credit Agreement/Transfer of Credits					
Government	1	1	1	80	80
Development of Conservation Strategy					
Government	1	1	1	200	200
Formal Agreements					
Government	1	1	1	4	4
Management Plans					
Government	1	1	1	120	120
Monitoring Reports					
Government	1	1	1	24	24
Site-Level Agreements					
Government	1	1	1	100	100

Information collection requirement	Annual number of respondents	Average number of responses each	Annual number of responses	Average completion time per response (hours)	Estimated annual burden hours *
Site-Level Reports					
Government	1	1	1	24	24
State Developed Voluntary Conservation-Action Program					
Government	1	1	1	320	320
State Recordkeeping Requirements					
Government	1	1	1	240	240
State Reports—Voluntary Prelisting Conservation Actions Taken Under Program					
Government	1	1	1	.25	0
Totals:	12		12		1,148

* 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. 2023–06759 Filed 3–31–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/ A0A501010.999900]

HEARTH Act Approval of Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into agriculture, business, residential, and wind and solar leases without further BIA approval.

DATES: BIA issued the approval on March 28, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *carla.clark@bia.gov,* (702) 484–3233.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal Leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing

regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–06875 Filed 3–31–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/A0A501010.999900]

Self-Governance PROGRESS Act Negotiated Rulemaking Committee; Notice of Meeting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Self-Governance PROGRESS Act Negotiated Rulemaking Committee (Committee), will hold the eighth public meeting to negotiate and advise the Secretary of the Interior (Secretary) on a proposed rule to implement the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019 (PROGRESS Act).

DATES:

- *Meeting:* The meeting is open to the public and to be held both in-person and virtually on Thursday, April 20, 2023, from 9:00 a.m. to 5:00 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** below for details on how to participate.
- *Comments:* Interested persons are invited to submit comments on or before May 21, 2023. Please see **ADDRESSES** below for details on how to submit written comments.

ADDRESSES: Send your written comments to the Designated Federal Officer, Vickie Hanvey, by any of the following methods:

- *Preferred method:* Email to *comments@bia.gov* with ''PROGRESS Act'' in subject line.
- Mail, hand-carry or use an overnight courier service to the Designated Federal Officer, Ms. Vickie Hanvey, Office of Self-Governance, Office of the Assistant Secretary—Indian Affairs, 1849 C Street NW, Mail Stop 3624, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Vickie Hanvey, Designated Federal Officer, *comments@bia.gov,* (918) 931–0745.

SUPPLEMENTARY INFORMATION: This meeting is being held under the authority of the PROGRESS Act (Pub. L. 116–180), the Negotiated Rulemaking Act (5 U.S.C. 561 *et seq.*), and the Federal Advisory Committee Act (5 U.S.C. Appendix 10). The Committee is to negotiate and reach consensus on recommendations for a proposed rule that will replace the existing regulations at 25 CFR part 1000. The Committee will be charged with developing proposed regulations for the Secretary's implementation of the PROGRESS Act's provisions regarding the Department of the Interior's (DOI) Self-Governance Program. See Public Law 116–180.

The PROGRESS Act amends subchapter I of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5301 *et seq.,* which addresses Indian Self-Determination, and subchapter IV of the ISDEAA, which addresses DOI's Tribal Self-Governance Program. The PROGRESS Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes. The **Federal Register** notice published on May 18, 2022 (87 FR 30256) discussed the issues to be

negotiated and the members of the Committee.

Meeting Agenda/Accessibility: These meetings are open to the public. Detailed information about the Committee, including meeting agendas can be accessed at *https://www.bia.gov/service/progress-act.* Topics for this meeting will include Committee priority setting, possible subcommittees and assignments, subcommittee reports, negotiated rulemaking process, schedule and agenda setting for future meetings, Committee caucus, and public comment. The Committee meetings will begin at 9:00 a.m. Eastern Standard Time on Thursday, April 20, 2023. Members of the public wishing to attend the meeting should visit *https://teams.microsoft.com/l/meetupjoin/19%3ameeting_NmU5MGQ0NDUtZTdkMi00MzExLWIxMmEtMjc4NjE5NzM5NTll%40thread.v2/0?context=%7B%22Tid%22%3A%220693b5ba-4b18-4d7b-9341-f32f400a5494%22%2C%22Oid%22%3A%2213321130-a12b-4290-8bcf-30387057bd7b%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a* for virtual access. The public meeting will be held at the Federal Mediation and Conciliation Service located at 250 E St SW, Washington, DC 20219.

Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give DOI sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

Public Comments During Meeting: Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Requests to address the Committee during the meeting will be accommodated in the order the requests are received. Individuals who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written comments to the Designated Federal Officer up to 30 days following the meeting. Written comments may be sent to Vickie Hanvey listed in the **ADDRESSES** section above.

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.

Authority: 5 U.S.C. 10.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–06878 Filed 3–31–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into agricultural, business, residential, wind and solar, public, religious, educational, recreational, cultural, and other purposes leases without further BIA approval.

DATES: BIA issued the approval on March 28, 2023

FOR FURTHER INFORMATION CONTACT: Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *carla.clark@bia.gov,* (702) 484–3233.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal Leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent

payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–06874 Filed 3–31–23; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–571–572 and 731–TA–1347–1348 (Review)]

Biodiesel From Argentina and Indonesia; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty and countervailing duty orders on biodiesel from Argentina and Indonesia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: March 6, 2023.

FOR FURTHER INFORMATION CONTACT: Tyler Berard (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 6, 2023, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 73781, December 1, 2022) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on May 3, 2023. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules,

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before May 11, 2023, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by May 11, 2023. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 28, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–06776 Filed 3–31–23; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission has found the response submitted on behalf of the Clean Fuels Alliance Fair Trade Coalition to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–487 and 731–TA–1197–1198 (Second Review)]

Steel Wire Garment Hangers From Taiwan and Vietnam; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on steel wire garment hangers from Taiwan and Vietnam and the countervailing duty order on steel wire garment hangers from Vietnam would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted April 3, 2023. To be assured of consideration, the deadline for responses is May 3, 2023. Comments on the adequacy of responses may be filed with the Commission by June 14, 2023.

FOR FURTHER INFORMATION CONTACT: Tyler Berard (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 10, 2012, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of steel wire garment hangers from Taiwan (77 FR 73424). On February 5, 2013, Commerce issued antidumping and countervailing duty orders on imports of steel wire garment hangers from Vietnam (78 FR 8105 and 8107). Following the first five-year reviews by Commerce and the Commission, Commerce issued a continuation of the antidumping duty orders on steel wire garment hangers from Taiwan and Vietnam, effective May 31, 2018 (83 FR 24972), and the countervailing duty order on steel wire garment hangers from Vietnam, effective August 20, 2018 (83 FR 42111). The Commission is now conducting second reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Taiwan and Vietnam.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its expedited first five-year review determinations, the Commission defined a single *Domestic Like Product* consisting of steel wire garment hangers, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its expedited first five-year review determinations, the Commission defined the *Domestic Industry* as all U.S. producers of steel wire garment hangers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 3, 2023. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 14, 2023. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–565, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided In Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in number of hangers and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in number of hangers and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in number of hangers and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2016, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute

products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.
Issued: March 29, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–06848 Filed 3–31–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1359 (Review)]

Carton-Closing Staples From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on carton-closing staples from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted April 3, 2023. To be assured of consideration, the deadline for responses is May 3, 2023. Comments on the adequacy of responses may be filed with the Commission by June 14, 2023.

FOR FURTHER INFORMATION CONTACT: Andres Andrade (202–205–2078), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 8, 2018, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of carton-closing staples from China (83 FR 20792). The Commission is conducting a review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined a single *Domestic Like Product* consisting of carton-closing staples including staples in stick and roll form, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all U.S. producers of carton-closing staples, except for one domestic producer that it excluded from the *Domestic Industry* under the related parties provision.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is May 8, 2018.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21

days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 3, 2023. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 14, 2023. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–563, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in staples and value data in U.S. dollars, f.o.b. plant).

If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in staples and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in staples and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 29, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–06847 Filed 3–31–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–891 (Fourth Review)]

Foundry Coke From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on foundry coke from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted April 3, 2023. To be assured of consideration, the deadline for responses is May 3, 2023. Comments on the adequacy of responses may be filed with the Commission by June 14, 2023.

FOR FURTHER INFORMATION CONTACT: Nitin Joshi (202–708–1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*.) The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 17, 2001, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of foundry coke from China (66 FR 48025). Commerce issued a continuation of the antidumping duty order on imports of foundry coke from China following Commerce's and the Commission's first five-year reviews, effective January 10, 2007 (72 FR 1214), second five-year reviews, effective June 8, 2012 (77 FR 34012), and third five-year reviews, effective May 11, 2018 (83 FR 22007). The Commission is now conducting a fourth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its expedited first and second five-year review determinations, and its full third five-year review determination, the Commission defined a single *Domestic Like Product* consisting of foundry coke, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, its expedited first and second five-year review determinations, and its full third five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of foundry coke.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 3, 2023. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 14, 2023. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/*

handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.* No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–564, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2016, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) *(Optional)* A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 29, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–06861 Filed 3–31–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Benzene Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (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.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The standard requires employers to monitor worker exposure, to provide medical surveillance, and maintain accurate records of worker exposure to benzene. These records will be used by employers, workers, physicians and the Government to ensure that workers are not harmed by exposure to benzene in the workplace. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 27, 2022 (87 FR 79353).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Benzene Standard.

OMB Control Number: 1218–0129.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 12,148.

Total Estimated Number of Responses: 241,371.

Total Estimated Annual Time Burden: 114,598 hours.

Total Estimated Annual Other Costs Burden: $10,958,889.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–06795 Filed 3–31–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Consumer Price Index Commodities and Services Survey.'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before June 2, 2023.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room G225, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, at 202–691–7628 (this is not a toll-free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

Under the direction of the Secretary of Labor, the Bureau of Labor Statistics (BLS) is directed by law to collect, collate, and report full and complete statistics on the conditions of labor and the products and distribution of the products of the same; the Consumer Price Index (CPI) is one of these statistics. The collection of data from a wide spectrum of retail establishments and government agencies is essential for the timely and accurate calculation of the Commodities and Services (C&S) component of the CPI.

The CPI is the only index compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The CPI is a measure of the average change in prices over time paid by urban consumers for a market basket of goods and services. The CPI is used most widely as a measure of inflation and serves as an indicator of the effectiveness of government economic policy. It is also used as a deflator of other economic series, that is, to adjust other series for price changes and to translate these series into inflation-free dollars. Examples include retail sales, hourly and weekly earnings, and components of the Gross Domestic Product.

A third major use of the CPI is to adjust dollar values. Over 2 million workers are covered by collective bargaining contracts, which provide for increases in wage rates based on increases in the CPI. At least fifteen states have laws that link the adjustment in state minimum wage to the changes in the CPI. In addition, as a result of statutory action, the CPI affects the income of more than 90 million of Americans through cost-of-living adjustments tied to the CPI: over 65 million Social Security beneficiaries and over 38 million Supplemental Nutrition Assistance Program (SNAP) recipients, among other programs. Changes in the CPI also affect the cost of lunches for over 30 million children who eat lunch at school as part of the National School Lunch Program (NSLP). Under the National School Lunch Act and Child Nutrition Act, national average payments for those lunches and breakfasts are adjusted annually by the Secretary of Agriculture based on the change in the CPI series, ''Food away from Home.'' Many private firms and individuals use the CPI to keep rents, royalties, alimony payments, and child support payments in line with changing prices. Since 1985, the CPI has been used to adjust the Federal income tax structure to prevent inflation-induced tax rate increases.

II. Current Action

Office of Management and Budget clearance is being sought for the Consumer Price Index (CPI) Commodities and Services Survey.

The continuation of the collection of prices for the CPI is essential since the CPI is the nation's chief source of information on retail price changes. If the information on C&S prices were not collected, Federal fiscal and monetary policies would be hampered due to the lack of information on price changes in a major sector of the U.S. economy and estimates of the real value of the Gross National Product could not be made. The consequences to both the Federal and private sectors would be far reaching and would have serious repercussions on Federal government policy and institutions.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: Consumer Price Index Commodities and Services Survey.

OMB Number: 1220–0039.

Type of Review: Extension.

Affected Public: Business or other for-profit; not for profit institutions; and State, Local or Tribal Government.

	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden
Pricing	35,622	8.78119	312,598	0.33	103,157
Outlet Rotation	10,683	1	10,683	1.0	10,683
Total	46,305	n/a	323,281	n/a	113,840

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on March 28, 2023.

Eric Molina,

Acting Division Chief, Division of Management Systems.

[FR Doc. 2023–06794 Filed 3–31–23; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0027]

The 1,3-Butadiene Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the 1,3 Butadiene Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by June 2, 2023.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2012–0027) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The 1,3-Butadiene requires employers to monitor employee exposure to 1,3-Butadiene, develop and maintain compliance and exposure goal programs if employee exposures to BD are above the standard's permissible exposure limits or action level, label respirator filter elements to indicate the date and time it is first installed on the respirator, establish medical surveillance programs to monitor employee health and to provide employees with information about their exposures, and the health effects of exposure to BD.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in 1,3 Butadiene Standard. The agency requests to maintain previously approved burden hours calculations for this proposed information collections request (ICR), which is 887 burden hours.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: The 1,3 Butadiene Standard (29 CFR 1910.1051).

OMB Control Number: 1218–0170.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government

Number of Respondents: 57.

Number of Responses: 3,609.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 887.

Estimated Cost (Operation and Maintenance): $96,576.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648; or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA–2012–0027). You may supplement electronic submissions by uploading document files electronically.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–06812 Filed 3–31–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0045]

Aerial Lifts Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in its Standard on Aerial Lifts.

DATES: Comments must be submitted (postmarked, sent, or received) by June 2, 2023.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2009–0045) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements are to ensure that employers who modify an aerial lift for a use not intended by the lift manufacturer (field modified aerial lift) will obtain from that manufacturer, or an equivalent entity (such as a nationally-recognized laboratory), a written certificate stating that: the modification conforms to the applicable provisions of ANSI A92.2–1969 and OSHA's Aerial Lifts Standard; and the modified aerial lift is at least as safe as it was before modification. Doing so reduces the likelihood of worker's serious bodily injury or death during the operation of field modified aerial lifts.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

• Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;

• The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

OSHA is requesting to retain its previous approved burden hour estimate of one (1) hour contained in the standard on Aerial Lifts (29 CFR 1926.453). There are no program changes or adjustments associated with the information collection requirement in the standard. The agency has correspondingly adjusted the per response time burden to maintain a burden as close as is possible to the actual time of no hours (1 hour).

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Aerial Lifts Standard (29 CFR 1926.453).

OMB Control Number: 1218–0216.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 10.

Number of Responses: 10.

Frequency of Response: On occasion.

Average Time per Response: The average time per response is 6 minutes.

Estimated Total Burden Hours: 1.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648; or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0045). You may supplement electronic submissions by uploading document files electronically.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the website *http://www.regulations.gov* to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed in Washington, DC, on March 28, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–06798 Filed 3–31–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0002]

Walking and Working Surfaces Standard for General Industry; Extension of the Office of Management and Budget's (OMB) Approval of the Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Walking and Working Surfaces Standard for General Industry.

DATES: Comments must be submitted (postmarked, sent, or received) by June 2, 2023.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2013–0002) for the Information Collection Request (ICR). OSHA will place all comments and requests to speak, including any personal information you provide, in the public docket without change, which may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of a continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the

desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (See 29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (See 29 U.S.C 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements are to help employers protect workers from slip, trip, and fall hazards.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend approval of the information collection requirements contained in the Walking and Working Surfaces Standard for General Industry (29 CFR part 1910, subpart D). OSHA is requesting to maintain the estimated hour and cost burdens approved under the previous package.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Walking and Working Surfaces for General Industry (29 CFR 1910, subpart D).

OMB Control Number: 1218–0199.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 487,500.

Number of Responses: 1,032,860.

Frequency of Response: On occasion.

Average Time per Response: Various.

Estimated Total Burden Hours: 498,640.

Estimated Cost (Operation and Maintenance): $54,697,500.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax), if your comments, including attachments are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648; or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2013–0002). You may supplement electronic submissions by uploading document files electronically.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on March 28, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–06797 Filed 3–31–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2018–0018]

Asbestos in General Industries Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Asbestos in General Industries.

DATES: Comments must be submitted (postmarked, sent, or received) by June 2, 2023.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2018–0018) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about

submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements are to help employers monitor worker exposure to asbestos, to take action to reduce worker exposure to the PEL, to monitor worker health, and to provide workers with information about their exposures and the health effects that may result from their occupational involvement with asbestos, and provide access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected workers, and designated representatives.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Standard on Asbestos in General Industries (29 CFR 1910.1001). The agency is requesting an adjustment decrease in 10,125 hours to 10,124 hours, a difference of 1 hour. This decrease is due to the agency's use of a new method for rounding burden hours.

OSHA is additionally requesting an adjustment increase capital costs increased by $84,900 (from $957,660 to $1,042,560). This adjustment is related to the transition of contractor housekeeping employee notifications from supervising employees to contracted employees and annual changes in estimated occupation and wage rates.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Asbestos in General Industries Standard (29 CFR 1910.1001).

OMB Control Number: 1218–0133.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 121.

Number of Responses: 30,269.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 10,124.

Estimated Cost (Operation and Maintenance): $1,042,560.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax), if your comments, including attachments are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648; or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2018–0018). You may supplement electronic submissions by uploading document files electronically.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed in Washington, DC, on March 28, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–06796 Filed 3–31–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services

[NARA–2023–024]

Chief Freedom of Information Act Officers Council

AGENCY: Office of Government Information Services (OGIS), National

Archives and Records Administration (NARA) and Office of Information Policy (OIP), Department of Justice (DOJ).

ACTION: Notice of meeting.

SUMMARY: We are announcing a meeting of the Chief Freedom of Information Act (FOIA) Officers Council, co-chaired by the Director of OGIS and the Director of OIP.

DATES: The meeting will be on Tuesday, April 25, 2023, from 10 a.m. to 11:30 p.m. EDT. Please register for the meeting no later than 11:59 p.m. EDT on Sunday, April 23, 2023 (registration information is detailed below).

ADDRESSES: The April 25, 2023, meeting will be a virtual meeting. We will send access instructions to those who register according to the instructions below.

FOR FURTHER INFORMATION CONTACT: Martha Murphy, by email at *ogis@nara.gov* with the subject line ''Chief FOIA Officers Council,'' or by telephone at 202–741–5770.

SUPPLEMENTARY INFORMATION: This meeting is open to the public in accordance with the Freedom of Information Act (5 U.S.C. 552(k)). Additional details about the meeting, including the agenda, will be available on Chief FOIA Officers Council website at *https://www.foia.gov/chief-foia-officers-council.*

Procedures: The virtual meeting is open to the public. If you wish to offer oral public statements during the public comment period, you must register in advance through Eventbrite at *https://chief-foia-officers-council-4-25-2023.eventbrite.com.* You must provide an email address so that we can provide you with information to access the meeting online. Public comments will be limited to three minutes per individual. We will also live-stream the meeting on the National Archives YouTube channel, *https://www.youtube.com/watch?v=KcVJeuH-JBg* and include a captioning option. To request additional accommodations (*e.g.,* a transcript), email *ogis@nara.gov* or call 202–741–5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Martha Murphy (contact information listed above).

Alina M. Semo,

Director, Office of Government Information Services.

[FR Doc. 2023–06790 Filed 3–31–23; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of April 3, 10, 17, 24, May 1, 8, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of April 3, 2023

There are no meetings scheduled for the week of April 3, 2023.

Week of April 10, 2023—Tentative

There are no meetings scheduled for the week of April 10, 2023.

Week of April 17, 2023—Tentative

Thursday, April 20, 2023

9:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Spent Fuel Storage and Transportation Business Lines (Public Meeting). (Contact: Kellee Jamerson: 301–415–7408)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of April 24, 2023—Tentative

There are no meetings scheduled for the week of April 24, 2023.

Week of May 1, 2023—Tentative

There are no meetings scheduled for the week of May 1, 2023.

Week of May 8, 2023—Tentative

There are no meetings scheduled for the week of May 8, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: March 29, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–06906 Filed 3–30–23; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0141, Health Benefits Election Form, OPM 2809

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Healthcare & Insurance/Federal Employee Insurance Operations (FEIO) offers the general public and other federal agencies the opportunity to comment on the renewal of an expiring information collection request (ICR), without change, OPM 2809, Health Benefits Election Form.

DATES: Comments are encouraged and will be accepted until May 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *http://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 or fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington,

DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 936–0401.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0141) was previously published in the **Federal Register** on February 6, 2023 at 88 FR 7765, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

OPM 2809, Health Benefits Election form, is used by annuitants and former spouses to elect, cancel, suspend, or change health benefits enrollment during periods other than open season.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Health Benefits Election Form (written).

OMB Number: 3206–0141.

Frequency: On Occasion.

Affected Public: Individuals or Households.

Number of Respondents: 20,000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 10,000.

Title: Health Benefits Election Form (verbal).

Number of Respondents: 10,000.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 1,667.

U.S. Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2023–06814 Filed 3–31–23; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97214; File No. SR–NYSEAMER–2023–23]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Rule 7.25E

March 28, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder, [3] notice is hereby given that, on March 22, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.25E, which governs the allocation of securities to Designated Market Makers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.25E, which governs the allocation of securities to Designated Market Makers (''DMMs''). Specifically, the Exchange proposes to require issuers to select all DMM units to interview. The Exchange also proposes to correct a typographical error.

Background and Proposed Rule Change

Rule 7.25E currently provides two options for the allocation of securities to DMMs: (1) the issuer selects the DMM unit; or (2) the issuer delegates selection of the DMM unit to the Exchange.

If the issuer proceeds under the first option, Rule 7.25E(b)(1)(A) provides that the listing company will select a minimum of four DMMs to interview from the pool of DMMs eligible to participate in the allocation process.[4] The Exchange proposes amending Rule 7.25E(b)(1)(A) to require that issuers select all DMM units to interview. To effectuate this change, the Exchange would delete ''a minimum of four'' and add ''all'' after ''select'' and before ''DMM units to interview.''

The proposed change would conform Rule 7.25E(b)(1)(A) with Rule 103B(III)(A)(1) of the Exchange's affiliate New York Stock Exchange LLC (''NYSE''), which does not specify a minimum number of DMMs to be interviewed. The Exchange believes that not specifying a number of DMMs to be interviewed would ensure that all eligible DMM units would have an opportunity to participate in the allocation process at all times irrespective of the number of DMMs operating on the Exchange.

In addition, the Exchange proposes a non-substantive change to Rule 7.25E(b)(1)(A) to replace ''shall'' with ''must'' before ''select.'' Finally, the Exchange also proposes to correct the heading in Rule 7.25E(b)(1), which should read ''Issuer Selection.'' These proposed changes would further align the Exchange's Rule with NYSE Rule 103B.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of

[4] *See* Rule 7.25E(b)(1)(A). As of the date of this filing, there are currently three active DMMs on the Exchange.

[5] 15 U.S.C. 78f(b).

Section 6(b)(5),[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposed amendments to Rule 7.25E(b)(1)(A) to provide that issuers interview all DMMs would promote just and equitable principles of trade because no eligible DMM unit would be excluded from the issuer interview. For the same reason, the Exchange believes the proposal is designed to remove impediments to, and perfect the mechanism of a free and open market and a national market system. The Exchange believes that requiring all DMM units to participate in issuer interviews would also continue to foster competition and optimal performance among DMMs. In addition, the Exchange believes that harmonizing the Exchange's rule with that of its NYSE affiliate would provide greater harmonization among affiliated exchanges that have adopted substantially similar requirements for DMM interviews, thereby resulting in similarly efficient administration of listing interviews across exchanges.

Finally, the Exchange's proposed technical, non-substantive changes—correcting a typographical error and replacing ''will'' with ''must''—adds clarity and transparency to the Exchange's Rules and reduces potential investor confusion, which would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes would continue to foster competition and optimal performance among DMMs, thereby enhancing the quality of the services DMMs provide to issuers. Further, the Exchange believes that the proposed changes would not be burdensome to issuers since issuers are currently interviewing all DMMs. Even assuming an increase in the burden on issuers during the allocation process if the number of DMMs on the Exchange should increase, the Exchange believes that any such increased burden would be small relative to the benefits that additional competition among DMM units may provide. Issuers could, moreover, permit the Exchange to select the DMM unit pursuant to the process found in Rule 7.25E(b)(2).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2023–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2023–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2023–23 and should be submitted on or before April 24, 2023.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–06781 Filed 3–31–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97211; File No. SR–NASDAQ–2023–006]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of the SGI Dynamic Tactical ETF Under Nasdaq Rule 5750 (''Proxy Portfolio Shares'')

March 28, 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 17, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposed a rule change relating to the SGI Dynamic Tactical ETF (the ''Fund'') of The RBB Fund, Inc. (the ''Company''), to list and trade shares of the Fund under Nasdaq Rule 5750 (''Proxy Portfolio Shares''). The shares of the Fund are collectively referred to herein as the ''Shares.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted Nasdaq Rule 5750, which governs the listing and trading of Proxy Portfolio Shares on the Exchange.[3]

The Fund is an actively-managed exchange-traded fund (''ETF''). The Shares will be offered by the Company, which was established as a Maryland corporation on February 29, 1988.[4] The Company, which is registered with the Commission as an investment company under the 1940 Act, has filed a registration statement on Form N–1A (''Registration Statement'') relating to the Fund with the Commission.[5] The Fund is a series of the Company. Summit Global Investments, LLC (''Adviser'') is the investment adviser to the Fund. SG Trading Solutions, LLC, is the sub-adviser (''Sub-Adviser'') to the Fund. Quasar Distributors, LLC is the principal underwriter and distributor of the Fund's Shares. U.S. Bank Global Fund Services acts as the administrator, transfer agent and provides fund accounting services to the Fund. U.S. Bank, N.A. acts as the custodian to the Fund.

Nasdaq Rule 5750(b)(5) provides that if the investment adviser to the Investment Company (as defined herein) issuing Proxy Portfolio Shares[6] is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio,[7] the Proxy Basket and/or Custom Basket, as applicable.[8] In addition, Nasdaq Rule 5750(b)(5) further requires that changes to the Fund Portfolio, the Proxy Basket and/or Custom Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio, and/or the Proxy Basket, and/or Custom Basket, as applicable, or changes thereto.[9]

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange adopted Nasdaq Rule 5750 in Securities Exchange Act Release No. 89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (SR–NASDAQ–2020–032).

[4] The Commission has issued an order, upon which the Company may rely, granting certain exemptive relief under the Investment Company Act of 1940 (the ''1940 Act''). *See* Investment Company Act Release No. 34857 (March 15, 2023) (''Exemptive Order''). Investments made by the Fund will comply with the conditions set forth in the Application and the Exemptive Order. The description of the operation of the Fund herein is based, in part, on the Registration Statement and Exemptive Order. The Exchange will not commence trading in the Fund's Proxy Portfolio Shares until the Registration Statement is effective.

[5] The Registration Statement (File No. 811–05518) is available on the Commission's website at *https://www.sec.gov/Archives/edgar/data/0000831114/000139834422007151/fp0074774_485apos.htm.*

[6] The term ''Proxy Portfolio Share'' means a security that: (A) represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (B) is issued in a specified aggregate minimum number in return for a deposit of a specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; (C) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

[7] The term ''Fund Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

[8] The term ''Proxy Basket'' means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Proxy Portfolio Shares. The website for each series of Proxy Portfolio Shares shall disclose the following information regarding the Proxy Basket as required under Rule 5750, to the extent applicable: (A) Ticker symbol; (B) CUSIP or other identifier; (C) Description of holding; (D) Quantity of each security or other asset held; and (E) Percentage weight of the holding in the portfolio. For purposes of this proposed rule change, the term Custom Basket means a portfolio of securities that is different from the Proxy Basket and is otherwise consistent with the exemptive relief issued pursuant to the 1940 Act applicable to a series of Proxy Portfolio Shares.

[9] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser, Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. The Adviser and Sub-Adviser are each not registered as a broker-dealer and are not affiliated with broker-dealers. The Adviser and Sub-Adviser will each implement and maintain a ''fire wall'' with respect to any future broker-dealer affiliates regarding access to information concerning the composition of and/or changes to the Fund Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable. In addition, Rule 206(4)–7 under the

Continued

In addition, in accordance with Nasdaq Rule 5750(b)(6), any person or entity, including a custodian, Reporting Authority,[10] distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket or Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Proxy Basket or Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition of and/or changes to such Fund Portfolio, Proxy Basket or Custom Basket, as applicable, or changes thereto.

The issuer represents that with respect to each Proxy Basket and Custom Basket: (i) the Proxy Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time, and (ii) with respect to each Custom Basket utilized by a series of Proxy Portfolio Shares, each business day, before the opening of trading in the regular market session, the investment company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash.

In the event (a) the Adviser or Sub-Adviser registers as a broker-dealer, or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and will maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of and/or changes to the Fund Portfolio, the Proxy Basket and/or Custom Basket, as applicable and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund Portfolio, the Proxy Basket, and/or Custom Basket, as applicable, or changes thereto.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Fund's Principal Investment Strategies

The investment objective of the Fund will be to seek to provide long-term capital appreciation. Under normal market conditions,[11] the Fund will seek to achieve its investment objective by utilizing both fundamental analysis and proprietary quantitative frameworks that help inform the investment decision-making process regarding strategic investment opportunities.

Under the terms of the Exemptive Order,[12] the Fund's investments are limited to the following: ETFs traded on a U.S. exchange, exchange-traded notes traded on a U.S. exchange, U.S. exchange-traded common stocks, U.S. exchange-traded preferred stocks, U.S. exchange-traded American Depositary Receipts, U.S. exchange-traded real estate investment trusts, U.S. exchange-traded commodity pools, U.S. exchange-traded metals trusts, U.S. exchange-traded currency trusts, and common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Fund's Shares, exchange-traded futures that are traded on a U.S. futures exchange contemporaneously with the Fund's Shares; and cash and cash equivalents (which are short-term U.S. Treasury securities, government money market funds, and repurchase agreements). The Fund will not borrow for investment purposes, hold short positions, or purchase any securities that are illiquid investments at the time of purchase.

The Fund's holdings will conform to the permissible investments as set forth in the Registration Statement and Exemptive Order and the holdings will be consistent with all requirements in the Registration Statement and Exemptive Order. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

Surveillance

The Exchange represents that trading in the Proxy Portfolio Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these surveillance procedures are adequate to properly monitor the trading of Proxy Portfolio Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Proxy Portfolio Shares on the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).

The Exchange prior to the commencement of trading will require the issuer of each series of Proxy Portfolio Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by

Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[10] The term ''Reporting Authority'' in respect of a particular series of Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; Custom Basket; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares. A series of Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

[11] The term ''normal market conditions'' as used herein, is defined in Nasdaq Rule 5750(c)(4). On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser or Sub-Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

[12] *See supra* note 4.

the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of each series of Proxy Portfolio Shares. The Exchange believes that this is appropriate because it will provide the Exchange and/or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series of Proxy Portfolio Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it and/or FINRA with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the Shares.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[13] Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading in Shares of the Fund will be halted if the circuit breaker parameters in Equity 4, Rule 4121 have been reached.

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Proxy Portfolio Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Proxy Portfolio Shares also will be subject to Rule 5750(d)(2)(D), which sets forth circumstances under which a series of Proxy Portfolio Shares may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., Eastern Time in accordance with Equity 2, Section 8. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5750(b)(3), the minimum price variation for quoting and entry of orders in Proxy Portfolio Shares traded on the Exchange is $0.01. A ''Creation Unit'' will consist of at least 5,000 Shares.

With respect to Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and FINRA will continue to monitor Exchange members for compliance with such requirements.

Availability of Information

The Fund's website (*www.sgiam.com*) will include a form of the prospectus for the Fund that may be downloaded. The Exchange notes that a significant amount of information about the Fund and its Fund Portfolio is publicly available at all times and the website and information will be publicly available at no charge. The Fund will disclose the Proxy Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis on the Fund's website (*www.sgiam.com*). With respect to each Custom Basket, each business day, before the opening of trading in the regular market session, the Investment Company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash. Intraday pricing information for all constituents of the Proxy Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. Each series of Proxy Portfolio Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for the Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose any other information regarding premiums and discounts and the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. On each business day, before the commencement of trading of Shares, the Fund will publish on its website the Proxy Basket and the ''Guardrail Amount'' (see description below) for that day.

Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available for free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.* The Exchange also notes that the Exemptive Order provides that the issuer of the Fund will comply with Regulation Fair Disclosure. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Proxy Basket and Custom Baskets

Pursuant to the Exemptive Order, the Fund is permitted to use Custom Baskets. For the Fund, the Proxy Basket will consist of all of the Fund portfolio holdings but will be weighted differently, subject to a minimum

[13] *See* Nasdaq Rules 4120 and 4121.

weightings overlap of 90% with the Fund Portfolio at the beginning of each business day. Intraday pricing information for all constituents of the Proxy Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The Exchange notes that the Fund's net asset value (''NAV'') will form the basis for creations and redemptions for the Fund and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares.[14] The Adviser expects that the Shares of the Fund will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as the Fund's Proxy Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In addition, in accordance with the Exemptive Order, the Fund may determine to use Custom Baskets that differ from the Proxy Portfolio in that they include instruments that are not in the Proxy Portfolio, or are included in the Proxy Portfolio but in different weightings. In the event that the value of the Proxy Basket is not the same as the Fund's NAV, the creation and redemption baskets will consist of the securities included in the Proxy Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Proxy Basket.

Nasdaq Rule 5750(c)(6) defines ''Custom Basket'' for the purposes of Nasdaq Rule 5750 as a portfolio of securities that is different from the Proxy Basket and is otherwise consistent with the exemptive relief issued pursuant to the 1940 Act applicable to a series of Proxy Portfolio Shares.

The Proxy Basket will be constructed utilizing a proprietary algorithmic process that will be applied to the Fund Portfolio on a daily basis. The Proxy Basket holdings (including the identity and quantity of investments in the Proxy Basket) will be publicly available on the Fund's website before the commencement of trading in Fund Shares on each business day, although the weightings of such holdings in the Proxy Basket will differ from the Fund Portfolio. The Proxy Basket will have a minimum overlap of 90% with the Fund Portfolio at the beginning of each business day, with the precise percentage of aggregate overlap in weightings from 90% to 100% to be randomly generated each day (the overlap and tracking error will be available on the Fund's website before the commencement of trading in Proxy Portfolio Shares on each business day and discussed further below).

In addition to the disclosure of the Proxy Basket, the Fund will also publish the Guardrail Amount on its website on each business day before the commencement of trading in the Proxy Portfolio Shares on the Exchange. The Guardrail Amount is the maximum deviation between the weightings of the specific instruments and cash positions in the Proxy Basket from the weightings of those specific instruments and cash positions in the Fund Portfolio. The Guardrail Amount is intended to ensure that no individual security in the Proxy Basket will be overweighted or underweighted by more than the publicly disclosed percentage when compared to the actual weighting of each security within the Fund Portfolio as of the beginning of each business day. The Adviser expects the performance of the Proxy Basket and the Fund Portfolio to be closely aligned in light of the construction of the Proxy Basket, and does not expect the ''Tracking Error'' to exceed 1% (available on the Fund's website before the commencement of trading in Proxy Portfolio Shares on each business day). ''Tracking Error'' is defined to mean the standard deviation over the past three months of the daily difference, in percentage terms, between the Proxy Basket per Share NAV and that of the Fund at the end of the business day.

The Fund will also disclose the entirety of its Fund Portfolio, including the name, identifier, market value and weight of each security and instrument in the portfolio, no less than 60 days following the end of every fiscal quarter.

Additional Information

The Exchange represents that the Shares will conform to the initial and continued listing criteria under Nasdaq Rule 5750, including the dissemination of key information such as the Proxy Basket, the Custom Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Proxy Portfolio Shares, and firewalls as set forth in the proposed Exchange rules applicable to Proxy Portfolio Shares.

Price information for the exchange-listed instruments held by the Fund, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities. Moreover, U.S.-listed equity securities held by the Fund will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[15] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All futures contracts that the Fund may invest in will be traded on a U.S. futures exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets (as applicable) such as the Fund Portfolio and the Proxy Basket, the Custom Basket, and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. In addition, pursuant to Nasdaq Rule 5750(d)(1)(B), the Exchange prior to the commencement of trading in the Proxy Portfolio Shares, will obtain a representation from the issuer of the Shares of the Fund that (i) the NAV per share for the Fund will be calculated daily, (ii) each of the following will be made available to all market participants at the same time

[14] *See* Nasdaq Rule 5735.

[15] For a list of the current members of ISG, *see www.isgportal.com*. The Exchange notes that not all components of the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

when disclosed: the NAV, the Proxy Basket, and the Fund Portfolio, and (iii) the issuer and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Act,[16] including with respect to any Custom Basket.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Fund's holdings will conform to the permissible investments as set forth in the Registration Statement and Exemptive Order and the holdings will be consistent with all requirements in the Registration Statement and Exemptive Order. The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

The Exchange believes that the particular instruments that may be included in the Fund Portfolio and the Proxy Basket or Custom Basket do not raise any concerns related to the Proxy Basket or Custom Basket being able to closely track the NAV of the Fund because such instruments include only instruments that trade on an exchange contemporaneously with the Shares. In addition, the Fund's Proxy Basket or Custom Basket is designed to reliably and consistently correlate to the performance of the Fund.

The Adviser anticipates that the returns between the Fund and its respective Proxy Basket or Custom Basket will have a consistent relationship and that the deviation in the returns between the Fund and its Proxy Basket or Custom Basket will be sufficiently small such that the Proxy Basket or Custom Basket will provide authorized participants, arbitrageurs and other market participants (collectively, ''Market Makers'') with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Fund will allow Market Makers to understand the relationship between the performance of the Fund and its Proxy Basket or Custom Basket. Market Makers will be able to estimate the value of and hedge positions in the Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

The Exchange notes that a significant amount of information about the Fund and its Fund Portfolio is publicly available at all times. The Fund will disclose the Proxy Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis and will be available on the Fund's website before the commencement of trading in Proxy Portfolio Shares on each business day. With respect to each Custom Basket, each business day, before the opening of trading in the regular market session, the Investment Company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash. Intraday pricing information for all constituents of the Proxy Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The issuer of the Proxy Portfolio Shares will at a minimum publicly disclose the entirety of its portfolio holdings,[17] including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

The Fund's website will include additional quantitative information updated on a daily basis, [18] including, on a per Share basis for the Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose any other information regarding premiums and discounts and the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. On each business day, before the commencement of trading of Shares, the Fund will publish on its website the Proxy Basket and the Guardrail Amount for that day.

The Exchange represents that the Shares of the Fund will continue to comply with all other proposed requirements applicable to Proxy Portfolio Shares, including the dissemination of key information such as the Proxy Basket, the Custom Basket, disclosure of the Fund Portfolio quarterly, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Proxy Portfolio Shares, and firewalls as set forth in the proposed Exchange rules applicable to Proxy Portfolio Shares and the orders approving such rules. Moreover, U.S.-listed equity securities, exchange-traded futures that are traded on a U.S. futures exchange, and non-U.S. listed equity securities held by the

[16] 17 CFR 243.100–243.103. Regulation Fair Disclosure provides that whenever an issuer, or any person acting on its behalf, discloses material nonpublic information regarding that issuer or its securities to certain individuals or entities—generally, securities market professionals, such as stock analysts, or holders of the issuer's securities who may well trade on the basis of the information—the issuer must make public disclosure of that information.

[17] This information will be made available on the Fund's website at *www.sgiam.com.*

[18] *Id.*

Fund will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[19]

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Closing Price or Bid/Ask Price and NAV.

All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset (as applicable), and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that (i) the NAV per share for the Fund will be calculated daily, (ii) each of the following will be made available to all market participants at the same time when disclosed: the NAV, the Proxy Basket, and the Fund Portfolio, and (iii) the issuer and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Act,[20] including with respect to any Custom Basket.

FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

[19] *Supra* note 15.

[20] *See supra* note 16.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange notes that the proposed rule change will facilitate the listing of a new type of actively-managed exchange-traded product, thus enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and subparagraph (f)(6) of Rule 19b–4 thereunder.[22]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[23] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission has noticed for immediate effectiveness proposed rule changes to permit listing and trading of Proxy Portfolio Shares on the Exchange and Active Proxy Portfolio Shares (which securities are substantively similar to Proxy Portfolio Shares but listed on another exchange) of numerous funds.[24] The proposed listing rule for the Fund raises no novel legal or regulatory issues. Thus, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[25]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2023–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] *See e.g.,* Securities Exchange Act Release No. 95082 (Feb 4, 2021), 88 FR 8972 (Feb. 10, 2021) (SR–NASDAQ–2021–005) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the ALPS Active REIT ETF of ALPS ETF Trust To List and Trade Shares of the Fund Under Nasdaq Rule 5750) (Proxy Portfolio Shares); Securities Exchange Act Release Nos. 92104 (June 3, 2021), 86 FR 30635 (June 9, 2021) (SR–NYSEArca–2021–46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)); 92958 (September 13, 2021), 86 FR 51933 (September 17, 2021) (SR–NYSEArca–2021–77) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Nuveen Growth Opportunities ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)); and 93264 (October 6, 2021), 86 FR 56989 (October 13, 2021) (SR–NYSEArca–2021–84) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Schwab Ariel ESG ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)).

[25] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2023–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2023–006 and should be submitted on or before April 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–06782 Filed 3–31–23; 8:45 am]

BILLING CODE 8011–01–P

[26] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97212; File No. 4–698]

Joint Industry Plan; Notice of Withdrawal of Proposed Amendment to the National Market System Plan Governing the Consolidated Audit Trail, as Modified by Partial Amendment Nos. 1 and 2

March 28, 2023.

On May 13, 2022, the Operating Committee for Consolidated Audit Trail, LLC (''CAT LLC''), on behalf of the Participants [1] to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[2] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Exchange Act''),[3] and Rule 608 of Regulation NMS thereunder,[4] a proposed amendment to the CAT NMS Plan (''Proposed Amendment'') to implement a revised funding model (''Executed Share Model'') for the consolidated audit trail (''CAT'') and to establish a fee schedule for Participant CAT fees in accordance with the Executed Share Model. The Proposed Amendment was published for comment in the **Federal Register** on June 1, 2022.[5]

On August 30, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[6] to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[7] On November 15, 2022, CAT LLC submitted a letter to propose a partial amendment of the Proposed Amendment (''Partial Amendment No. 1'') and to respond to the Commission's solicitation of comments in the OIP and comments received on the OIP.[8] On November 23, 2022, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[9] the Commission extended the period within which to conclude proceedings regarding the Proposed Amendment to 240 days from the date of publication of the Notice.[10] Notice of the filing of Partial Amendment No. 1 was published for comment in the **Federal Register** on December 2, 2022.[11]

On January 20, 2023, the Commission extended the period within which to conclude proceedings regarding the Proposed Amendment to 300 days from the date of publication of the Notice.[12] On February 15, 2023, CAT LLC submitted a letter to propose an additional partial amendment to the Proposed Amendment (''Partial Amendment No. 2'') and to respond to issues discussed in the comments on Partial Amendment No. 1.[13] The Commission is publishing this notice to reflect that on March 1, 2023, prior to the end of the 300-day period provided for in Exchange Act Rule 608(b)(2)(ii),[14] the Participants withdrew the Proposed Amendment, as modified by Partial Amendment Nos. 1 and 2.[15]

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–06784 Filed 3–31–23; 8:45 am]

BILLING CODE 8011–01–P

[1] The Participants are: BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants'').

[2] The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016). The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT (''Company''). On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC, which became the Company. The latest version of the CAT NMS Plan is available at *https://catnmsplan.com/about-cat/cat-nms-plan.*

[3] 15 U.S.C. 78k–1.

[4] 17 CFR 242.608.

[5] *See* Securities Exchange Act Release No. 94984 (May 25, 2022), 87 FR 33226 (June 1, 2022) (''Notice'').

[6] 17 CFR 242.608(b)(2)(i).

[7] *See* Securities Exchange Act Release No. 95634 (Aug. 30, 2022), 87 FR 54558 (Sept. 6, 2022) (''OIP''). Comments received in response to the OIP and the Notice can be found on the Commission's website at *https://www.sec.gov/comments/4-698/4-698-a.htm.*

[8] *See* Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 15, 2022).

[9] *See* 17 CFR 242.608(b)(2)(i).

[10] *See* Securities Exchange Act Release No. 96382 (Nov. 23, 2022), 87 FR 73366 (Nov. 29, 2022).

[11] *See* Securities Exchange Act Release No. 96394 (Nov. 28, 2022), 87 FR 74183 (Dec. 2, 2022). Comments received in response to Partial Amendment No. 1 can be found on the Commission's website at *https://www.sec.gov/comments/4-698/4-698-a.htm.*

[12] *See* Securities Exchange Act Release No. 96725 (Jan. 20, 2023), 88 FR 5059 (Jan. 26, 2023).

[13] *See* Letter from Michael Simon, Chair Emeritus, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Feb. 15, 2023), *available at https://www.sec.gov/comments/4-698/4-698-a.htm.* Because CAT LLC withdrew the Proposed Amendment, as modified by Partial Amendment Nos. 1 and 2, before the Commission's 15-day deadline in Rule 608(b)(1)(ii) of Regulation NMS to send notice of the filing of a proposed amendment to any national market system plan to the **Federal Register**, the Commission did not publish notice of the filing of Partial Amendment No. 2. *See* 17 CFR 242.608(b)(1)(ii).

[14] 17 CFR 242.608(b)(2)(ii).

[15] *See* Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Mar. 1, 2023).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, April 6, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

Contact Person For More Information: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: March 30, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–06962 Filed 3–30–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97210; File No. SR–MEMX–2023–06]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend and Restate the Limited Liability Company Agreement of MEMX Holdings LLC

March 28, 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 17, 2023, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] 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

The Exchange is filing with the Commission a proposed rule change to amend and restate the Sixth Amended and Restated Limited Liability Company Agreement (the ''Sixth Amended LLC Agreement'') of MEMX Holdings LLC (''Holdco'') as the Seventh Amended and Restated Limited Liability Company Agreement of Holdco (the ''Seventh Amended LLC Agreement'') to reflect certain amendments, as further described below. Holdco is the parent company of the Exchange and directly or indirectly owns all of the limited liability company membership interests in the Exchange. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend and restate the Holdco LLC Agreement[5] to reflect: (i) amendments related to the creation of the Class D Units[6] in connection with the sale by Holdco of Class D Units to certain new and existing Members[7] in a capital raise transaction (the ''Transaction''); (ii) amendments related to certain changes with respect to the Holdco Board in connection with the Transaction; (iii) an amendment to the definition of ''Company Related Party''; (iv) an amendment to the provision relating to the preparation and delivery of Holdco's annual budget; and (v) various clarifying, updating, conforming, and other non-substantive amendments. Each of these amendments is discussed below.

Background

The primary purpose of the Exchange's proposal to amend and restate the Holdco LLC Agreement is to create a new class of membership interest in Holdco, the Class D Units, which are the exact same type of membership interest (*i.e.,* have the same privileges, preference, duties, liabilities, obligations and rights) as the existing Class C Units except for the original purchase price of such Units, and

[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] References herein to the ''Holdco LLC Agreement'' refer to the Sixth Amended LLC Agreement or the Seventh Amended LLC Agreement, as appropriate in the context. All section references herein are to sections of the Holdco LLC Agreement unless indicated otherwise. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Holdco LLC Agreement.

[6] As proposed, the term ''Class D Units'' means the Class D–1 Units and the Class D–2 Units; the term ''Class D–1 Units'' means the Units having the privileges, preference, duties, liabilities, obligations and rights specified with respect to ''Class D–1 Units'' in the Holdco LLC Agreement; and the term ''Class D–2 Units'' means the Units having the privileges, preference, duties, liabilities, obligations and rights specified with respect to ''Class D–2 Units'' in the Holdco LLC Agreement. The term ''Unit'' means a unit representing a fractional part of the membership interests of the members of Holdco. *See* Section 1.1 for the full definition of Unit.

[7] The term ''Member'' refers to a person (*i.e.,* an individual or entity) that owns one or more Units and is admitted as a limited liability company member of Holdco.

effectuate the sale by Holdco of Class D Units to certain new and existing Members pursuant to the Transaction.

The proceeds resulting from the sale of Class D Units pursuant to the Transaction will be paid to Holdco by the new and existing Members participating in the Transaction as purchasers of Class D Units (the ''Participating Members''), and such proceeds will be used by Holdco for general corporate expenses, including to support the operations and regulation of the Exchange, which is a subsidiary of Holdco. Although each Member's proportionate ownership of Holdco will change as a result of the Transaction, no Member will exceed any ownership or voting limitations applicable to the Members set forth in the Holdco LLC Agreement after giving effect to the Transaction and the amendments to the Holdco LLC Agreement proposed herein.[8]

Additionally, in connection with the Transaction, one new Member, Optiver PSI B1 LLC (''Optiver''), will receive the right to nominate a Director, thereby increasing the size of the Holdco Board from fourteen (14) to fifteen (15) Directors. Other than this change to the composition of the Holdco Board, a proposed change to the definition of ''Supermajority Board Vote'' to maintain the current affirmative vote threshold and the addition of an ''Options Market Structure Committee,'' each as further described below, the governance of Holdco would continue under its existing structure. None of the amendments to the Holdco LLC Agreement proposed herein would impact the governance of the Exchange.

The Transaction and all amendments to the Holdco LLC Agreement proposed herein were previously approved by the Holdco Board on March 8, 2023, in accordance with the Holdco LLC Agreement. The Exchange expects the Transaction to be completed pursuant to one or more closings that would occur within ninety (90) days of the initial closing. The Exchange expects the initial closing to occur on or shortly after the date on which the amendments to the Holdco LLC Agreement proposed herein become effective.

Amendments Related to the Creation of the Class D Units

In connection with the Transaction, the proposal would amend the Holdco LLC Agreement to create a new class of Units, the Class D Units, in order to effectuate the sale by Holdco of Class D Units to the Participating Members. As proposed, the Class D Units are the exact same type of membership interest (*i.e.,* have the same privileges, preference, duties, liabilities, obligations and rights) as the existing Class C Units except that the Class D Units are being sold at a different price per Unit than which the Class C Units were previously sold, which results in the need for Holdco to create a new class of Units (*i.e.,* the Class D Units) to facilitate the Transaction. Other than the original purchase price of such Units being different, the Class D Units are the exact same security in every respect and are functionally equivalent to the Class C Units.

Authorization and Issuance of the Class D Units

Section 3.2 currently contains provisions related to the authorization and issuance of the Class A Units, the Class C Units, and the Common Units and that specify the voting rights associated with such Units. The proposal would amend Section 3.2 to similarly reflect the creation of the Class D Units, including to add new paragraph (f), which contains provisions related to the authorization and issuance of the Class D Units (comprised of the Class D–1 Units and the Class D–2 Units, as described below) and that specifies the voting rights associated with such Units by reference to the applicable paragraphs of Section 4.7, which prescribes the actions on which holders of Units are entitled to vote.

Voting Construct Applicable to Class D Units

The Exchange notes that previous amendments to the Holdco LLC Agreement changed the governance structure of Holdco from a construct in which the Members had no voting or management rights (except in very limited circumstances) and the authority to manage and control the business and affairs of Holdco was otherwise vested in the Holdco Board to a construct in which the Class A Units, the Class C Units, and the Common Units were divided into ''voting'' and ''non-voting'' series and the Members holding Class A Units, Class C Units and/or Common Units were granted certain voting rights associated with the ownership of such Units, with different voting rights associated with the ''voting'' series and the ''non-voting'' series of such classes of Units.[9] The sole purpose of this prior change to Holdco's governance structure was to facilitate certain Members' compliance with requirements and restrictions under the United States Bank Holding Company Act of 1956, as amended (''BHCA''), in light of amendments to the BHCA regulations issued by the Board of Governors of the Federal Reserve System regarding the framework for determining ''control'' under the BHCA as well as interpretations of such amendments by certain Members that are subject to the BHCA.[10]

Under the current proposal, the Class D Units would similarly be divided into a ''voting'' series (*i.e.,* the Class D–1 Units), with certain voting rights as prescribed in Section 4.7 that mirror those of the Class C–1 Units, and a ''non-voting'' series (*i.e.,* the Class D–2 Units), with more limited voting rights as prescribed in Section 4.7 that mirror those of the Class C–2 Units. Like the creation of the ''voting'' and ''non-voting'' series of the Class C Units, the Class A Units, and the Common Units, the sole purpose of the proposal to create separate ''voting'' and ''non-voting'' series of Class D Units is to maintain a voting construct that facilitates certain Members' compliance with the BHCA.

Under the proposal, Section 4.7 would be amended to reflect the creation of the Class D Units and provide for the voting rights associated with the ownership of the Class D–1 Units and the Class D–2 Units. Specifically, the Class D–1 Units and/or the Class D–2 Units, as applicable, would vote together with the Class C–1 Units and/or the Class C–2 Units, as applicable, on all matters on which the Class C–1 and/or the Class C–2 Units are currently entitled to vote, subject to two exceptions set forth in amended Section 4.7(d) and proposed new Section 4.7(f), which are described below, and the voting construct applicable to the Class D Units would exactly mirror the voting construct applicable to the Class C Units since, as noted above, they are intended to be the exact same type of membership interest with all of the same privileges, preference, duties, liabilities,

[8] *See* Section 3.5, which sets forth certain limitations with respect to the ownership and voting of Units. The Exchange notes that the proposal contains an amendment to Section 3.5, which is described below.

[9] *See* Securities Exchange Act Release No. 93452 (October 28, 2021), 86 FR 60683 (November 3, 2021) (SR–MEMX–2021–15). The Exchange notes that the voting rights of holders of Class A Units, Class C Units, and/or Common Units remain very limited and relate only to voting on significant corporate matters related to the administration, ownership, capital, or dissolution of Holdco or any Holdco subsidiary (other than the Exchange), and the authority to manage and control the business and affairs of Holdco, including the right to amend or modify the Holdco LLC Agreement, remains otherwise vested in the Holdco Board. *See* Section 4.6(a).

[10] *Id.*

obligations and rights under the Holdco LLC Agreement.

The only actions on which the Class D Units would vote on their own, and not together with the Class C Units, are set forth in: (i) amended Section 4.7(d), which provides that any waiver or amendment of any provision of the Holdco LLC Agreement which would significantly and adversely affect the rights, preferences, powers or privileges of the Class D–1 Units shall not be effected without the approval of a majority of the then-outstanding Class D–1 Units; and (ii) proposed new Section 4.7(f), which provides that any exchange, reclassification or cancellation (whether by merger, consolidation or otherwise) or modification of the terms of all or part of the Class D Units which exchange, reclassification, cancellation or modification, as applicable, significantly and adversely affects the rights or preferences of the Class D Units shall not be effected without the approval of the majority of the then-outstanding Class D–1 Units and Class D–2 Units, voting together as a single class. These exceptions to the general principle that the Class D Units vote together with the Class C Units are rooted in common corporate law principles and are intended to safeguard the Class D Units against actions that significantly and adversely affect the Class D Units specifically, and such provisions mirror existing provisions that confer the same voting rights associated with the Class C Units with respect to actions that significantly and adversely affect the Class C Units specifically. In connection with these proposed amendments to Section 4.7, the proposal would further amend Section 4.7 to renumber the existing paragraphs after proposed new paragraph (g) and update relevant section references throughout the Holdco LLC Agreement accordingly.

The proposal would also amend Section 4.6, which also relates to the voting rights of the Members, in a manner that conforms and is consistent with the proposed amendments to Section 4.7 providing for certain voting rights associated with the ownership of Class D Units, as described above, and to otherwise reflect the creation of the Class D Units.

Additionally, the proposal would amend Section 3.10, which contains provisions that permit a Class A Member and/or Class C Member to elect to specify the maximum voting percentage that such Member may have with respect to its Voting Class A Units and/or Class C–1 Units (any such election, a ''Restricted Voting Election'') and that provide for the conversion of Voting Class A Units and/or Class C–1 Units into Nonvoting Class A Units and/or Class C–2 Units, respectively, and vice versa, in certain circumstances to maintain such Member's specified maximum voting percentage with respect to such Units. Section 3.10 is primarily in place in its current form to provide a mechanism for Class A Members and/or Class C Members to manage any potential deemed voting interests attributable to the Voting Class A Units and/or Class C–1 Units for BHCA and/or other regulatory purposes, although any Member holding Voting Class A Units and/or Class C–1 Units is able to make a Restricted Voting Election with respect to such Units for any purpose.

Currently, Section 3.10 provides that a Class A Member may notify Holdco of a Restricted Voting Election with respect to its Voting Class A Units (''Maximum Voting Class A Voting Percentage''), and a Class C Member may notify Holdco of a Restricted Voting Election with respect to its Class C–1 Units (''Maximum Class C–1 Voting Percentage''). The proposal would amend Section 3.10 to reflect the creation of the Class D Units and group the Class D–1 Units together with the Class C–1 Units for purposes of Section 3.10 in a manner consistent with the harmonized voting structure with respect to such Units described above, such that a Member holding Class C–1 Units and/or Class D–1 Units would now be permitted to notify Holdco of a Restricted Voting Election with respect to its Class C–1 Units and/or Class D–1 Units (''Maximum Class C–1/D–1 Voting Percentage''). In connection with this change, the proposal would also amend the following defined terms to reflect that the Class D–1 Units are now grouped together with the Class C–1 Units for purposes of Section 3.10: ''Class C–1 Voting Percentage'' would become ''Class C–1/D–1 Voting Percentage'';[11] ''Maximum Class C–1 Voting Percentage'' would become ''Maximum Class C–1/D–1 Voting Percentage'';[12] and ''Prior Class C–1 Voting Percentage'' would become ''Prior Class C–1/D–1 Voting Percentage.''[13] Similarly, the proposal would amend Exhibit F, which is a Restricted Voting Election Notice form used by Members to notify Holdco of a Restricted Voting Election, to reflect that a Class C Member and/or Class D Member would now elect to specify a Maximum Class C–1/D–1 Voting Percentage rather than a Maximum Class C–1 Voting Percentage. The provisions in Section 3.10 regarding the conversion of Voting Class A Units and/or Class C–1 Units into Nonvoting Class A Units and/or Class C–2 Units, respectively, and vice versa, in certain circumstances to maintain such Member's specified maximum voting percentage with respect to such Units would also be amended to include provisions relating to the conversion of Class D–1 Units into Class D–2 Units, and vice versa, in the same circumstances and on the same terms that are currently specified with respect to the Class A Units and Class C Units. Additionally, the other provisions of Section 3.10 would similarly be amended to reflect the creation of the Class D Units, including to add references to Class D Units and Class D–1 Units, as applicable, alongside references to Class C Units and Class C–1 Units, as applicable.

Convertibility and Conversion of Class D Units

As the Class D Units are the exact same type of membership interest as the Class C Units, which are convertible into Common Units as set forth in Section 3.11 (which references additional conversion terms set forth in Exhibit G—Conversion Rights of Class C Units), as proposed, the Class D Units are also convertible into Common Units under the same terms applicable to the Class C Units. Accordingly, the proposal would amend Section 3.11 and Exhibit G to reflect the creation of the Class D Units, include references to the Class D Units where appropriate, and include conversion provisions applicable to the Class D Units that mirror those applicable to the Class C Units. Proposed new Section 3.11(d) provides that in the event of any conversion to Common Units of any Class D Units, Class D–1 Units shall be converted into Voting Common Units, and Class D–2 Units shall be converted into Nonvoting Common Units. This conversion structure mirrors that applicable to the

[11] As proposed, the term ''Class C–1/D–1 Voting Percentage'' would be defined in Section 1.1 and would mean at any time of calculation, a fraction, expressed as a percentage, (i) the numerator of which is the number of then issued and outstanding Class C–1 Units and Class D–1 Units held by a Member and (ii) the denominator of which is the number of then issued and outstanding Class C–1 Units and Class D–1 Units held by all Members.

[12] As proposed, the term ''Maximum Class C–1/D–1 Voting Percentage'' would be defined in Section 3.10(a) and would refer to a Class C Member's or a Class D Member's maximum Class C–1/D–1 Voting Percentage.

[13] As proposed, the term ''Prior Class C–1/D–1 Voting Percentage'' would be defined in Section 3.10(e)(ii) and would refer to a Class C Member's or a Class D Member's Class C–1/D–1 Voting Percentage immediately prior to the issuance of any new Units or Unit Equivalents.

Class C Units (*i.e.,* Class C–1 Units are convertible into Voting Common Units, and Class C–2 Units are convertible into Nonvoting Common Units) and is similarly designed to keep the same voting construct in place with respect to the Common Units that are issued upon the conversion of any Class D Units (*i.e.,* Converted Common Units) in a manner consistent with the BHCA considerations described above. The Exchange notes that current Section 3.2(f), which would be renumbered as Section 3.2(g) to account for proposed new paragraph (f) described above, contains provisions relating to the Common Units and specifically provides that Common Units shall only be issuable in connection with an investment in the Company or upon conversion of Class C Units. As the Class D Units are also convertible into Common Units on the same terms as the Class C Units, as described above, the proposal would amend Section 3.2(g) to reflect that Common Units would also be issuable upon the conversion of Class D Units.

Amendment to Definitions and Other References To Reflect the Creation of the Class D Units

In connection with the creation of the Class D Units, the proposal would add definitions of the following terms in Section 1.1 (*i.e.,* the ''Definitions'' section of the Holdco LLC Agreement): Class D Member; [14] Class D–1 Units; [15] Class D–2 Units; [16] Class D Unit Original Purchase Price; [17] and Class D Units.[18] The proposal would also add references to Class D Units and/or Class D Members alongside references to Class C Units and/or Class C Members, as applicable, where appropriate throughout the Holdco LLC Agreement. Additionally, the proposal would amend the definitions of ''Converted Common Units''; ''Pro Rata Portion''; and ''Units'' in Section 1.1 to reflect the creation of, and include references to, the Class D Units.

[14] As proposed, the term ''Class D Member'' means a Member holding Class D–1 Units or Class D–2 Units, as applicable, in its capacity as such, together with its Affiliates that hold Class D–1 Units or Class D–2 Units, as applicable (for the sake of clarity, such Member and such Affiliates shall be considered to be one (1) Class D Member).

[15] *See supra* note 4 for the proposed definition of the term ''Class D–1 Units''.

[16] *See supra* note 4 for the proposed definition of the term ''Class D–2 Units''.

[17] As proposed, the term ''Class D Unit Original Purchase Price'' means the purchase price per Class D Unit set forth in the Members Schedule as of the Effective Date.

[18] *See supra* note 4 for the proposed definition of the term ''Class D Units''.

Priority of Distributions of the Class D Units

Like the Class C Units, the primary distinction between the Class D Units and the Common Units, as well as the primary purpose of providing for the convertibility of Class D Units into Common Units, is the respective priority of Distributions [19] made to the Members with respect to such Units, which is the main economic consequence of a Member's ownership of such Units. The respective priority of Distributions made to the Members with respect to the different classes of Units is currently set forth in Section 7.3 with respect to Distributions other than of proceeds in the event of a liquidation of Holdco, and in Section 13.3 with respect to Distributions of proceeds in the event of a liquidation of Holdco. The proposal would amend Sections 7.3 and 13.3 to reflect the priority of Distributions with respect to the Class D Units, which, as the Class D Units are the exact same type of membership interest as the Class C Units, is the same in each case for the Class D Units as for the Class C Units (*i.e.,* the Class D Units and the Class C Units are effectively treated as the same class of membership interest for such purposes and receive shares of Distributions together at the same times and on the same terms on a pro rata basis).

Rights and Obligations of the Class D Units

There are currently several provisions in the Holdco LLC Agreement related to the rights and obligations associated with the Class C Units and the Class C Members, and thus, make specific reference to ''Class C Units'' and/or ''Class C Members.'' As noted above, under the proposal, the Class D Units are the exact same type of membership interest and therefore have the same rights and obligations as the Class C Units, and thus, a Member's ownership of Class D Units would confer the same rights and obligations with respect to such Units as a Member's ownership of Class C Units. Accordingly, the proposal would make several amendments throughout the Holdco LLC Agreement to reflect that the Class D Units have such rights and obligations and to otherwise reflect the creation of the Class D Units, including to add references to Class D Units and/or Class D Member alongside references to Class C Units and/or Class C Member, as applicable, where appropriate for this purpose. Such changes include amendments to reflect that the Class D Units are subject to the same terms as the Class C Units regarding the Member meeting rights set forth in Sections 4.7(j) and (o) (renumbered from (h) and (m) due to the other amendments to Section 4.7 described above), the pre-emptive rights set forth in Section 9.1, the Director nomination rights set forth in Section 8.10, the Board Observer appointment rights set forth in Section 8.13, the Exchange Board Observer appointment rights set forth in Section 8.18(g), the right of first offer set forth in Section 10.3, the drag-along rights set forth in Section 10.4, the tag-along rights set forth in Section 10.5, the regulatory hardship transfer and surrender rights set forth in Section 10.6, the information rights set forth in Section 12.1, and the waiver consent rights set forth in Section 15.10.

[19] *See* Section 1.1 for the definition of Distribution.

Amendment to Section 3.5 Related to the Treatment of Class C Units, Class D Units, and Common Units as a Single Class for Purposes of Sections 3.5 and 3.8

Section 3.5 sets forth certain limitations with respect to the ownership and voting of Units, which are intended to prevent the concentration of voting power and control of Holdco, and, in turn, the Exchange, above certain specified thresholds. Specifically, Section 3.5(a) provides that for so long as Holdco controls the Exchange, subject to certain limited exceptions: (i) no Person, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, Units constituting more than forty percent (40%) of any class of Units; (ii) no Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, Units constituting more than twenty percent (20%) of any class of Units; and (iii) no Person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of Units or give any consent or proxy with respect to Units representing more than twenty percent (20%) of the voting power of the then issued and outstanding Units, nor may any Person, either alone or together with its Related Persons, enter into any agreement, plan or other arrangement with any other Person, either alone or together with its Related Persons, under circumstances that would result in the Units that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect

of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Units which would represent more than twenty percent (20%) of such voting power.

The Exchange notes that while the Class D Units and the Class C Units may be considered separate classes of Units due to the naming convention of such Units (*i.e.,* being referred to as Class C vs. Class D) and for certain general corporate law purposes (*i.e.,* entitled to vote separately on any matters that affect such Units specifically), as discussed above, the Class D Units are the exact same type of membership interest (*i.e.,* have the same privileges, preference, duties, liabilities, obligations and rights) as the Class C Units and also vote together with, and in the same manner as, the Class C Units pursuant to Section 4.7 on all actions on which such Units are entitled to vote (other than actions that significantly and adversely affect the Class C Units or the Class D Units specifically). Thus, as noted above, such Units are functionally equivalent with the only difference between such Units being the original purchase price paid by the applicable purchasing Members, which difference is the sole reason for the creation of the new Class D Units. Therefore, the Exchange and the Holdco Board believe that the Class C Units and the Class D Units should generally be treated as a single class of Units for most purposes, as evidenced by the proposed amendments described above that reflect the identical treatment under the Holdco LLC Agreement. Additionally, as noted above, the Class C Units and the Class D Units are both convertible into Common Units on the same terms, and, once converted, such Common Units retain the same voting construct, rights, and obligations as the Class C Units and/or Class D Units from which they were converted (other than the priority of Distributions, as described above), and Common Units vote together with the Class C Units and the Class D Units and in the same manner pursuant to Sections 4.7(c) and (j) on all actions on which Class C Units and Class D Units are entitled to vote (other than actions that significantly and adversely affect the Class C Units and/or the Class D Units specifically). As such, ownership of Class C Units, Class D Units, and/or Common Units effectively confer the same ownership rights to the holders of any such Units as relates to voting and governance of Holdco (*i.e.,* other than economic consequences resulting from priority of Distributions).

Accordingly, the proposal would amend Section 3.5, which sets forth certain limitations with respect to the ownership and voting of Units, to include a new paragraph (e), which provides that notwithstanding anything in the Holdco LLC Agreement to the contrary, the provisions of the Holdco LLC Agreement shall be construed in a manner such that the Class C Units, the Class D Units, and the Common Units together shall be treated as a single class of securities for purposes of Sections 3.5 and 3.8.

The Exchange reiterates that Members have limited control through ownership of Units, which is comprised of voting power associated with Units with respect to the limited actions prescribed in Section 4.7 and a Nominating Member's ability to nominate a Director to the Holdco Board, and, accordingly, the authority to manage and control the business and affairs of Holdco remains generally vested in the Holdco Board.[20] The Exchange further notes that Member representation on the Holdco Board is limited to one (1) Director per Nominating Member regardless of the amount/class of Units held by such Member, and the proposed change to treat the Class C Units, the Class D Units, and the Common Units together as a single class of securities for purposes of Sections 3.5 and 3.8 does not change this fact. In turn, Directors each have one vote, and thus, the general control of Holdco is widely dispersed (*i.e.,* as amended, there will be fifteen (15) Directors with one vote each, so each Director (and each Member that they represent) has less than seven percent (7%) of the voting power on the majority of matters related to the governance of Holdco).

The Exchange also notes that combining Class C Units, Class D Units, and Common Units does not increase the relative voting power or control of any Members, including the holders of Class A Units, as holders of Class A Units still vote as a separate class pursuant to Section 4.7(a) in the same manner as today. Rather, the only impact to voting power or control is dilution to Members holding Class C Units because the Exchange is bringing in new investors that will have voting power due to their holding Class D Units that will vote together with such Class C Units, as well as dilution to Members holding Class A Units in the sole event that the Class A Units vote together with the Class C Units and Class D Units with respect to the liquidation, dissolution or winding up of Holdco pursuant to Section 4.7(j). The only impact to ownership values is similarly dilutive, for both Members holding Class A Units and those holding Class C Units. However, the Holdco LLC Agreement contains provisions that permit such Members holding Class A Units and/or Class C Units to purchase Class D Units in the Transaction to retain their current proportionate ownership (and, in turn, control and voting power) to the extent they are concerned about any such dilution, and none of the proposed changes will impair the ability of the Exchange to carry out its functions and responsibilities as an ''exchange'' under the Exchange Act, and the rules and regulations promulgated thereunder, nor does it impair the ability of the SEC to enforce the Exchange Act and the rules and regulations promulgated thereunder with respect to the Exchange.

The Exchange notes that the proposed new Section 3.5(e) does not seek to treat Class A Units as a single class along with Class C Units, Class D Units, and Common Units for this purpose because Class A Units are economically distinct, as they are best characterized as participating preferred securities and are not convertible into Common Units, and because the Class A Units vote as a separate class (*i.e.,* not together with the Class C Units and Common Units) pursuant to Section 4.7(a). However, the Exchange also notes that in connection with any investment in Holdco it reviews the ownership of Units in the aggregate (*i.e.,* not based on class) and considers such aggregated ownership as the most meaningful way to consider the ownership and voting limitations for purposes of assessing relative control.

The Exchange notes that Section 3.8, which would remain unchanged, contains provisions allowing an Exchange Member that (together with its Related Persons) owns, directly or indirectly, of record or beneficially, Units constituting more than twenty percent (20%) of any class of Units to transfer the number of Units which account for the excess over such twenty percent (20%) ownership limitation, so the proposed new Section 3.5(e) makes clear that the same rule applying to the treatment of ownership of Class C Units, Class D Units, and Common Units for purposes of Section 3.5 described above would also apply to Section 3.8, as such section also contains a provision related to an ownership threshold, for purposes of which the Exchange and the Holdco Board believes Class C Units, Class D Units, and Common Units are functionally equivalent and appropriately treated as a single class.

[20] *See supra* note 7.

Amendments Related to Certain Changes With Respect to the Holdco Board in Connection With the Transaction

In connection with the Transaction, Optiver will become a Member with the right to nominate a Director to the Holdco Board (*i.e.,* a Nominating Member). Therefore, the size of the Holdco Board will increase from fourteen (14) to fifteen (15) Directors, as of the Effective Date. To reflect this change, the proposal would amend the Holdco LLC Agreement to add a definition of ''Optiver'' in Section 1.1 that reflects Optiver as a Class D Member and is consistent with the definitions of other Nominating Members with similar rights as Optiver; amend the definition of ''Market Maker Member'' [21] in Section 1.1 to include a reference to Optiver as a designated Market Maker Member; amend Section 8.3(a) to reflect the increased size of the Holdco Board at fifteen (15) Directors; and amend Section 8.3(b) to reference Optiver as a Member with the right to nominate a Director.

In addition, the proposal would amend the definition of ''Supermajority Board Vote'' in Section 1.1, as further described below. Currently, the term Supermajority Board Vote means the affirmative vote of at least seventy-seven percent (77%) of the votes of all Directors then entitled to vote on the matter under consideration and who have not recused themselves, whether or not present at the applicable meeting of the Board; provided that if such affirmative vote threshold results in the necessity of the affirmative vote of eight (8) such Directors or fewer, an affirmative vote of all but two (2) of such Directors shall be required instead with respect to such matter. As the size of the Holdco Board will increase as a result of the Transaction, as described above, the proposal seeks to amend the definition of ''Supermajority Board Vote'' in Section 1.1 to change the affirmative vote threshold from seventy-seven percent (77%) of the votes of all Directors then entitled to vote to seventy-three percent (73%) of the votes of all Directors then entitled to vote, which would maintain the current voting structure in that the affirmative vote of the same number of Directors would be required assuming that all Directors are entitled to vote on a matter and none have recused themselves. Specifically, under the current structure with fourteen (14) Directors, assuming all such Directors are entitled to vote on a matter and none have recused themselves, a matter would be approved as an affirmative Supermajority Board Vote if eleven (11) Directors vote in favor of a matter, and under the proposed structure with fifteen (15) Directors a matter would similarly be approved as an affirmative Supermajority Board Vote if eleven (11) Directors vote in favor of a matter. Accordingly, the Holdco Board and the Exchange believe it is appropriate to maintain this voting structure which results in an affirmative Supermajority Board Vote if eleven (11) Directors vote in favor of a particular matter. The proposal would not change any other aspect of the definition.

The proposal also would amend Section 8.9 to establish an Options Market Structure Committee and to restructure such Section in connection with this addition. Currently, Section 8.9 addresses committees of the Holdco Board, including the right of the Holdco Board to establish one or more committees of the Holdco Board that have the authority to make recommendations to the Holdco Board, but not to act for or on behalf of, or to bind Holdco. Section 8.9 also states that the Holdco Board shall establish a market structure committee and that so long as BlackRock remains a Nominating Member, (a) BlackRock shall have the right, but not the obligation, to designate one of its representatives to serve on such market structure committee at all times, and (b) if BlackRock so requests, a representative of BlackRock shall be the chairperson of such market structure committee. The Exchange proposes to establish paragraph (a) to Section 8.9, which would maintain the existing general language regarding committees and to entitle such paragraph ''Board Advisory Committees'', and to establish paragraph (b) to Section 8.9, which would describe Market Structure Committees generally and restate much of the language from paragraph (a), including that such Market Structure Committees shall have the power to make recommendations to, but not act for or on behalf of, or to bind the Holdco Board.

Proposed paragraph (b)(i) would describe the existing Market Structure Committee (which would be renamed as the Equities Market Structure Committee) and would provide that such committee shall be composed of Directors, Alternate Directors, Board Observers and/or other representatives of Nominating Members. Further, paragraph (b)(i) would include the existing language providing that so long as BlackRock remains a Nominating Member, (A) BlackRock shall have the right, but not the obligation, to designate one of its representatives to serve on the Equities Market Structure Committee at all times, and (B) if BlackRock so requests, a representative of BlackRock shall be the chairperson of the Equities Market Structure Committee.

Proposed paragraph (b)(ii) would mirror paragraph (b)(i), as described above, and would describe the new Options Market Structure Committee. Paragraph (b)(ii) would provide that the Options Market Structure Committee shall be composed of Directors, Alternate Directors, Board Observers and/or other representatives of Members. Further, paragraph (b)(ii) would provide similar rights to Optiver as those currently provided to BlackRock, and state that so long as Optiver remains a Nominating Member, (A) Optiver shall have the right, but not the obligation, to designate one of its representatives to serve on the Options Market Structure Committee at all times, and (B) if Optiver so requests, a representative of Optiver shall be the chairperson of the Options Market Structure Committee.

The Exchange notes that the Board currently has the right to establish committees by Supermajority Board Vote, and the codification of the existence, composition and details regarding the Market Structure Committees does not impact the governance of Holdco. Rather, the purpose of codifying the Market Structure Committees is in recognition of their importance to Holdco in providing advice to Holdco regarding developments in market structure applicable to these asset classes, namely equities and options. As noted above, neither Market Structure Committee will have the power to act for or on behalf of, or to bind, the Holdco Board. The Exchange also notes that it believes it is appropriate to make clear that it will allow other representatives of Nominating Members of Holdco (in the case of the Equities Market Structure Committee) and Members of Holdco (in the case of the Options Market Structure Committee), and not just Directors, Alternate Directors and Observers, to sit on such Market Structure Committees because many of Holdco's Members have representatives with particular expertise on market structure that can

[21] The term ''Market Maker Member'' refers to each of Citadel, Virtu, Jane Street and any other Member that is specifically designated as a Market Maker Member, in each case, together with each of their respective Affiliates. *See* Section 1.1. The Exchange notes that the only consequence of designation as a Market Maker Member under the Holdco LLC Agreement is that at least one Director nominated by any Market Maker Member (*i.e.,* a Market Maker Director) is generally required to establish a quorum for the transaction of business of the Holdco Board. *See* Section 8.6(a).

be valuable to Holdco but who do not sit on the Holdco Board.

Amendment to the Definition of ''Company Related Party''

The proposal seeks to amend the definition of ''Company Related Party'' in the Holdco LLC Agreement.[22] Specifically, the proposal would amend this term to also include any Person Controlled [23] by one or more Persons already listed in the current definition. The Exchange and the Holdco Board believe it is appropriate to designate any such Person as a Company Related Party, and therefore subject any contract, arrangement or transaction between such Person, on the one hand, and Holdco or any Holdco subsidiary, on the other hand (*i.e.,* a Company Related Party Transaction [24]), to the Holdco LLC Agreement's specific procedures for the Holdco Board's evaluation and approval of a Company Related Party Transaction, as the Exchange and the Holdco Board believe such Persons have a sufficient affiliation with Holdco to warrant the applicability of the Company Related Party Transaction procedures, which are designed to mitigate the potential conflicts of interest inherent in such transactions.[25]

Amendment to the Provision Relating to the Preparation and Delivery of the Annual Budget

The proposal seeks to amend the Holdco LLC Agreement's provision relating to the preparation and delivery of Holdco's annual budget. Currently, Section 12.4(a) provides that at least forty-five (45) calendar days prior to the start of any fiscal year (beginning with the fiscal year starting on January 1, 2020), Holdco shall prepare and deliver to the Holdco Board an annual budget setting forth all reasonably anticipated expenses of Holdco and its subsidiaries on a consolidated basis during the course of the upcoming Fiscal Year (the ''Annual Budget''). The proposal would amend Section 12.4(a) to delete the requirement that the Annual Budget must be prepared and delivered to the Holdco Board at least forty-five (45) calendar days prior to the start of the fiscal year. Instead, as proposed, Holdco would be required to prepare and deliver the Annual Budget to the Holdco Board on any date prior to the start of the fiscal year. The Exchange and the Holdco Board believe this change is appropriate because it would permit Holdco to deliver the Annual Budget, and seek the Holdco Board's approval of such Annual Budget, at the Holdco Board's fourth quarter meeting, which is typically scheduled on a date in December that is within forty-five (45) calendar days of the start of the fiscal year. The Annual Budget would therefore still be required to be prepared and delivered before the start of the fiscal year, but with greater flexibility on the timing.

Clarifying, Updating, Conforming, and Other Non-Substantive Amendments

Finally, the proposal would make various clarifying, updating, conforming, and other non-substantive amendments to the Holdco LLC Agreement, each of which is discussed below.

Amendments To Delete Obsolete Provisions and Language

The proposal would make the following amendments to the Holdco LLC Agreement to delete provisions and language that are now obsolete due to the passage of time:

- *Deletion of Sections 10.1(a)(ii) and (iii).* The proposal would amend Section 10.1(a) to delete paragraphs (ii) and (iii) thereunder, as such paragraphs contain provisions relating to certain restrictions on the transfer of Units, which by their terms only apply prior to September 5, 2022. As this date has already passed, these provisions are now obsolete, and the proposal would therefore delete such provisions and replace such provisions with a ''Reserved.'' placeholder to maintain the paragraph numbering.
- *Deletion of certain defined terms in Section 1.1.* The proposal would delete the following defined terms ''Released Class A Member''; ''Released Class A Units''; ''Released Class C Member''; and ''Released Class C Units'' in Section 1.1, as such terms are only used in Section 10.1(a)(ii), which section would itself be entirely deleted under the proposal as it is now obsolete, as described immediately above.
- *Deletion of language in Section 2.5(a).* The proposal would delete language in Section 2.5(a) that requires prior approval of the Holdco Board by Supermajority Board Vote of any expansion of the business of Holdco or any Holdco subsidiary into an options exchange and/or global equities exchange prior to December 14, 2021, as such date has already passed, and therefore, this language is now obsolete.

Clarifying Amendment to Section 4.6(b)

Currently, Section 4.6(b) provides that if applicable law requires that the Members vote on a particular matter, Members shall vote together as a single class (other than the Class B Members, the Class A Members (including the holders of Class A–1 Units and the holders of Class A–2 Units), the holders of Class C–2 Units, and the holders of Nonvoting Common Units (if any) which shall nevertheless not vote unless applicable law, as applicable, requires that they also vote). This provision is intended to reflect the ''voting'' and ''non-voting'' Units distinction under Holdco's governance structure, as described above, and as such, the ''non-voting'' Units are intended to not vote even if the Members are required to vote together as a single class under applicable law unless applicable law requires that such non-voting Units vote. However, the reference in this section to ''the Class A Members (including the holders of Class A–1 Units and the holders of Class A–2 Units)'' was made inadvertently, and instead, this section should only reference the ''non-voting'' series of the Class A Units (*i.e.,* the Nonvoting Class A–1 Units and the Nonvoting Class A–2 Units). Thus, the proposal would correct this inadvertent drafting error and make clear that the ''holders of Nonvoting Class A Units'' (which includes the Nonvoting Class A–1 Units and the Nonvoting Class A–2 Units) are included in this provision rather than all of the Class A Members. The Exchange notes that this proposed change is intended to merely correct an inadvertent drafting error and clarify the original intent of this provision rather than to make a substantive change.

Technical and Conforming Amendments To Reflect the Amendment and Restatement of the Holdco LLC Agreement

The proposal would make various technical and conforming amendments to the cover page, table of contents,

[22] As set forth in Section 1.1, the term ''Company Related Party'' currently means (a) any manager, officer, director, employee, independent contractor and/or consultant of Holdco or any Holdco subsidiary, (b) (i) any Member or holder of equity interests of Holdco or any Holdco subsidiary, (ii) any Affiliate or any manager, officer, director, employee, independent contractor and/or consultant of any Member or holder of equity interests of Holdco or any Holdco subsidiary or (iii) any manager, officer, director, employee, independent contractor and/or consultant of any Affiliate of a Member or holder of equity interests of Holdco or any Holdco subsidiary, and (c) any Immediate Family Member of any Person specified in clause (a).

[23] The term ''Control'' means, when used with respect to any specified Person, the power, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise. *See* Section 1.1.

[24] *See* Section 1.1 for the definition of Company Related Party Transaction.

[25] *See* Section 8.16 for the procedures relating to the Holdco Board's evaluation and approval of Company Related Party Transactions.

lead-in, recitals, and exhibits of the Holdco LLC Agreement to reflect that it is being amended and restated as the Seventh Amended LLC Agreement. Additionally, the proposal would amend the definition of ''Agreement'' to reference the Seventh Amended LLC Agreement; add ''Sixth Amended LLC Agreement'' as a defined term; replace references to ''Fifth Amended LLC Agreement'' with references to ''Sixth Amended LLC Agreement'' throughout the Holdco LLC Agreement where appropriate (*i.e.,* when referencing the prior version of the Holdco LLC Agreement); and update the certificate legend set forth in Section 3.12(b) to include a reference to the Seventh Amended LLC Agreement. Each of these proposed amendments is a conforming change intended to reflect the amendment and restatement of the Holdco LLC Agreement.

Clean-Up Amendments

Lastly, the proposal would make various non-substantive ''clean-up'' amendments throughout the Holdco LLC Agreement to correct minor drafting errors, update section references (*i.e.,* to reflect appropriate sections/paragraphs that were renumbered as a result of the proposed changes described herein), make minor grammatical and punctuational edits, and make other clarification and ministerial changes to clarify existing language or modify such language to conform with the other proposed amendments described above.

2. Statutory Basis

The Exchange believes that the proposed amendments to the Holdco LLC Agreement are consistent with Section 6(b) of the Act,[26] in general, and further the objectives of Section 6(b)(1) of the Act,[27] in particular, in that such amendments enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed amendments are consistent with Section 6(b)(5) of the Act,[28] which requires the rules of an exchange to be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Amendments Related to the Creation of the Class D Units

The Exchange believes that the creation of the Class D Units is consistent with the Act, as it would facilitate additional investment and funding into Holdco resulting from the sale of Class D Units pursuant to the Transaction, and such proceeds could be used by Holdco for general corporate expenses, including to support the operations and regulation of the Exchange, which would enable the Exchange to be organized as to have the capacity to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, and, in turn, would protect investors and the public interest. Further, the Exchange believes that the proposal for the Class D Units to be the exact same type of membership interest as the existing Class C Units (only with a different purchase price for such Units, as described above) is consistent with the Act because, as described above, the Class D Units would have the same privileges, preference, duties, liabilities, obligations and rights, and be subject to the same voting construct, as the Class C Units under the current Holdco LLC Agreement, which facilitates certain Members' compliance with the BHCA and provides for a governance structure of Holdco that is consistent with the structure currently in place, which was previously approved by the Commission.[29] As the Class D Units are the same type of membership interest as the Class C Units and do not otherwise impact the governance of Holdco or any Holdco subsidiary (including the Exchange), the Exchange believes that the creation of the Class D Units and related amendments to the Holdco LLC Agreement associated with the Class D Units relate solely to the administration of Holdco and the Transaction, and that such amendments would not impact the governance or operations of the Exchange. Accordingly, the Exchange does not believe the creation of the Class D Units or the Transaction would in any way restrict the Exchange's ability to be organized as to have the capacity to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

As noted above, although each Member's proportionate ownership of Holdco will change as a result of the Transaction, no Member will exceed any ownership or voting limitations applicable to the Members set forth in the Holdco LLC Agreement after giving effect to the Transaction and the proposed amendments to the Holdco LLC Agreement (including the amendment to Section 3.5 to treat the Class C Units, the Class D Units, and the Common Units as a single class of securities for purposes of such section). As described above, while the Class D Units and the Class C Units may be considered separate classes of Units due to the naming convention of such Units (*i.e.,* being referred to as Class C vs. Class D) and for certain general corporate law purposes (*i.e.,* entitled to vote separately on any matters that affect such Units specifically), the Class D Units are the exact same type of membership interest (*i.e.,* have the same privileges, preference, duties, liabilities, obligations and rights) as the Class C Units and also vote together with, and in the same manner as, the Class C Units pursuant to Section 4.7 on all actions on which such Units are entitled to vote (other than actions that significantly and adversely affect the Class C Units or the Class D Units specifically), and thus, such Units are functionally equivalent with the only difference between such Units being the original purchase price paid by the applicable purchasing Members, which difference is the sole reason for the creation of the new Class D Units. Additionally, as noted above, the Class C Units and the Class D Units are both convertible into Common Units on the same terms, and, once converted, such Common Units retain the same voting construct, rights, and obligations as the Class C Units and/or Class D Units from which they were converted (other than the priority of Distributions, as described above), and Common Units vote together with the Class C Units and the Class D Units and in the same manner pursuant to Section 4.7 on all actions on which Class C Units and Class D Units are entitled to vote (other than actions that significantly and adversely affect the Class C Units and/or the Class D Units specifically). As such, as noted above, ownership of Class C Units, Class D Units, and/or Common Units effectively confer the same ownership rights to the holders of any such Units as relates to voting and governance of Holdco (*i.e.,* other than economic consequences resulting from priority of Distributions).

Additionally, as discussed above, the proposal to treat the Class C Units, the Class D Units, and the Common Units as a single class for purposes of Sections

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(1).

[28] 15 U.S.C. 78f(b)(5).

[29] *See supra* note 7.

3.5 and 3.8 does not impact a Member's representation on the Holdco Board (which is limited to one (1) Director per Nominating Director regardless of the amount/class of Units held by such Member), does not increase the relative voting power or control of any Members, and is in fact dilutive to all Members' voting power and control to the extent that Class D Units now vote together with Class C Units generally and also with Class A Units solely with respect to the liquidation, dissolution or winding up of Holdco pursuant to Section 4.7(j). Therefore, the Exchange believes the amendment to treat the Class C Units, the Class D Units, and the Common Units together as a single class of securities for purposes of the ownership limitations and related provisions set forth in Sections 3.5 and 3.8 is appropriate and consistent Section 6(b)(1) of the Act,[30] in that such amendments enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, and because such amendments will not impair the ability of the Exchange to carry out its functions and responsibilities as an ''exchange'' under the Exchange Act, and the rules and regulations promulgated thereunder, nor do such amendments impair the ability of the SEC to enforce the Exchange Act and the rules and regulations promulgated thereunder with respect to the Exchange.

Amendments Related to Certain Changes With Respect to the Holdco Board in Connection With the Transaction

As described above, in connection with the Transaction, Optiver will receive the right to nominate a Director and the size of the Holdco Board will increase from fourteen (14) to fifteen (15) Directors, as of the Effective Date. The Exchange believes the proposed amendments to reflect these changes are appropriate and consistent with the Act, as such amendments would update and clarify the relevant provisions of the Holdco LLC Agreement to reflect changes with respect to the Holdco Board that will result from the Transaction, as described above.

Similarly, the Exchange believes the proposed amendment to the definition of Supermajority Board Vote to change the affirmative vote threshold from seventy-seven percent (77%) of the votes of all Directors then entitled to vote to seventy-three percent (73%) of the votes of all Directors then entitled to vote is appropriate and consistent with the Act, as the resulting voting structure is consistent with the current voting structure which results in an affirmative Supermajority Board Vote if eleven (11) Directors vote in favor of a particular matter assuming that all Directors are entitled to vote on a matter and none have recused themselves, as described above. The Exchange believes that updating the Holdco LLC Agreement to reflect these changes with respect to the Holdco Board would ensure clarity with respect to the corporate documents of the Exchange's parent company, thereby enabling the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, promoting just and equitable principles of trade, removing impediments to and perfect the mechanism of a free and open market, and protecting investors and the public interest.

Lastly, the Exchange believes the proposed amendment to the Section 8.9 to separate Board Advisory Committees generally from Market Structure Committees and establish the Options Market Structure Committee is appropriate and consistent with the Act, as the codification of these committees does not impact the governance of Holdco, as described above, but rather reflects the existence of such committees and their importance to Holdco in providing advice to Holdco regarding developments in market structure applicable to each asset class. As noted above, neither Market Structure Committee has the power to act for or on behalf of, or to bind, Holdco. The Exchange believes that updating the Holdco LLC Agreement to reflect these changes with respect to the Holdco Board would ensure clarity with respect to the corporate documents of the Exchange's parent company, thereby enabling the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, promoting just and equitable principles of trade, removing impediments to and perfect the mechanism of a free and open market, and protecting investors and the public interest.

Amendment to the Definition of ''Company Related Party''

The Exchange believes the proposed amendment to the definition of ''Company Related Party'' is consistent with the Act, as it would broaden the definition of such term and designate additional Persons that have an affiliation with Holdco (*i.e.,* Persons that are Controlled by one or more Persons that are currently deemed Company Related Parties) as Company Related Parties, thereby subjecting any contract, arrangement or transaction between any such Person, on the one hand, and Holdco or any Holdco subsidiary, on the other hand (*i.e.,* a Company Related Party Transaction), to the Holdco LLC Agreement's specific procedures for the Holdco Board's evaluation and approval of a Company Related Party Transaction. The Exchange notes that the proposed amendment would not remove any Person currently included in the definition of Company Related Party from such definition. As the Holdco LLC Agreement's Company Related Party Transaction procedures are designed to mitigate the potential conflicts of interest inherent in such transactions, the Exchange believes the proposed amendment to broaden the definition of Company Related Party and thereby subject transactions with additional Persons that have an affiliation with Holdco to such procedures would enable the Exchange and its parent company to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, promote just and equitable principles of trade, and protect investors and the public interest.

Amendment to the Provision Relating to the Preparation and Delivery of the Annual Budget

As described above, the proposal would amend Section 12.4(a) to delete the requirement that the Annual Budget must be prepared and delivered to the Holdco Board at least forty-five (45) calendar days prior to the start of the fiscal year. Instead, as proposed, Holdco would be required to prepare and deliver the Annual Budget to the Holdco Board on any date prior to the start of the fiscal year. The Exchange believes the proposed amendment to the Annual Budget provision is appropriate and consistent with the Act, as such amendment would permit Holdco to deliver the Annual Budget, and seek the Holdco Board's approval of such Annual Budget, at the Holdco Board's fourth quarter meeting, which is typically scheduled on a date in December that is within forty-five (45) calendar days of the start of the fiscal year. The Annual Budget would therefore still be required to be prepared

[30] 15 U.S.C. 78f(b)(1).

and delivered before the start of the fiscal year, but with greater flexibility on the timing, as described above. The Exchange believes that such change is related solely to the administration of Holdco and thus would not have any impact on the Exchange's ability to be so organized as to have the capacity to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, and therefore, such change is consistent with the Act.

Clarifying, Updating, Conforming, and Other Non-Substantive Amendments

The Exchange believes the proposed amendments to make clarifications, correct inadvertent drafting errors, delete obsolete language, make conforming changes consistent with the other proposed amendments to the Holdco LLC Agreement described above, and make other technical and conforming changes to reflect that the Holdco LLC Agreement is being amended and restated from the Sixth Amended LLC Agreement to the Seventh Amended LLC Agreement are consistent with the Act, as such amendments would update and clarify the Holdco LLC Agreement, thereby increasing transparency and helping to avoid any potential confusion resulting from retaining outdated, obsolete, or unclear provisions.

The Exchange believes the proposed amendments to the Holdco LLC Agreement described in this proposal are consistent with, and will not interfere with, the self-regulatory obligations of the Exchange. The Exchange importantly notes that it is not proposing to amend any of the provisions within the Holdco LLC Agreement or the Exchange's LLC Agreement dealing with the availability or protection of information, books and records, undue influence, conflicts of interest (other than to broaden the definition of Company Related Party and subject additional transactions to the Holdco LLC Agreement's procedures designed to mitigate conflicts of interest), unfair control by an affiliate, or regulatory independence of the Exchange.

For these reasons, the Exchange believes such amendments would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is not intended to address competitive issues but rather is concerned with the creation of an additional class of Units in connection with the Transaction as well as updates and other changes to the corporate documents of Holdco related to the administration and governance of Holdco, as described above.

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, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[31] and subparagraph (f)(6) of Rule 19b–4 thereunder.[32]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii) so that the Exchange may amend the Holdco LLC Agreement to create an additional class of Units in order to facilitate the closing of the Transaction as soon as possible. The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed changes to the Holdco LLC Agreement do not materially alter Holdco's existing governance framework or raise novel issues as the new Class D Units are functionally equivalent to the Class C Units other than the original purchase price of such Units being different. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing. 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.[33] If the Commission takes such action, the Commission shall 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–MEMX–2023–06 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–MEMX–2023–06. 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

[31] 15 U.S.C. 78s(b)(3)(A)(iii).

[32] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[33] 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).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2023–06 and should be submitted on or before April 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–06783 Filed 3–31–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

RIN 3245–AI02

Small Business Innovation Research Program and Small Business Technology Transfer Program Policy Directive

AGENCY: Small Business Administration.

ACTION: Notice of technical amendments; request for comments.

SUMMARY: The Small Business Administration is amending the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs Policy Directive to incorporate a template for agencies participating in the SBIR or STTR programs (Participating Agencies) to request the disclosure of statutorily required information from SBIR or STTR applicants.

DATES: These revisions to the SBIR/STTR Policy Directive take effect on May 3, 2023, without further action, unless significant adverse comment is received by May 3, 2023. If significant adverse comment is received, SBA will publish a timely withdrawal of the notice in the **Federal Register**.

ADDRESSES: You may submit comments, identified by number SBA–XXX–XXXX, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

SBA will post all comments on *www.regulations.gov.* Please do not submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Erick Page-Littleford at (202) 718–7738 or *erick.page-littleford@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The mission of the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs is to engage small business concerns (SBCs) to support scientific excellence and technological innovation through the investment of Federal research and research and development (R/R&D) funding in critical American priorities to build a strong national economy. Both programs follow a three-phase process throughout the Federal Government to solicit proposals and award funding agreements for R/R&D: Phase I, Phase II, and Phase III.

Section 9 of the Small Business Act (the Act), 15 United States Code (U.S.C.) 638(j) and (p), requires that the Small Business Administration (SBA) issue a policy directive setting forth guidance to the Participating Agencies. The SBIR and STTR (SBIR/STTR) Policy Directive outlines how agencies must generally conduct their programs. Each Participating Agency, however, may tailor its program to meet the needs of the individual Agency, as long as the general principles of the program set forth in the Act and directive are followed. Therefore, when incorporating SBIR/STTR policy into agency-specific regulations and procedures, Participating Agencies may develop and apply processes needed to implement the policy effectively; however, no Participating Agency may develop and apply policies, directives, or clauses that contradict, weaken, or conflict with the policy as stated in the Policy Directive.

SBA reviews its SBIR/STTR Policy Directive regularly to determine areas that need updating and further clarification. The SBIR and STTR Extension Act of 2022 (Extension Act), Public Law 117–183 (Sep. 30, 2022), amended section 9 of the Act; 15 U.S.C. 638(g)(13)–(17), (o)(17)–(21), and (vv), to require small businesses applying for SBIR or STTR awards to disclose information about the applicant's investment and foreign ties. SBA is amending Section 9(a) of the Policy Directive and adding an appendix to address responsibilities of Participating Agencies to collect disclosures of information about the applicant's investment and foreign ties, as required by the Extension Act. This amendment provides a common template, based on the statutory language in the Act, to uniformly capture the required disclosures. This action is designated a direct final rulemaking because SBA is adopting the statutory language for the disclosure template questions with minor clarifying edits.

II. Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35. Sections 4(b)(2)(B) and 5(c) of the Extension Act exclude the application of the Paperwork Reduction Act to the collection of information related to the implementation of a due diligence program authorized by 15 U.S.C. 638(vv). The collection of information pursuant to the disclosure template is referenced in section 15 U.S.C. 638(vv)(2)(A) and (B), is related to the implementation of a due diligence program, and therefore is exempt from the requirements of the Paperwork Reduction Act.

III. Amendment

Section 9—Responsibilities of SBIR/STTR Agencies and Departments

The Extension Act, Public Law 117–183 (Sep. 30, 2022), amended section 9 of the Act; 15 U.S.C. 638 (g)(13)–(17), (o)(17)–(21), and (vv) to require small businesses applying for SBIR or STTR awards to disclose information about the applicant's investment and foreign ties. This information must be provided by applicants for an SBIR or STTR award and must be considered as part of each Participating Agency's implementation of a due diligence program to assess security risks, as required by section 4 of the Extension Act, and incorporated into the Act at section 638(vv)(2). Sections 4(b)(2)(B) and 5(c) of the Extension Act exclude the application of the Paperwork Reduction Act, 44 U.S.C. chapter 35, to the collection of information related to the implementation of a due diligence program authorized by 15 U.S.C. 638(vv).

SBA is amending Section 9(a) of the Policy Directive and adding an appendix to address the responsibilities of Participating Agencies to collect

[34] 17 CFR 200.30–3(a)(12).

disclosures of certain information about the applicant's investment and foreign ties, as required by the Extension Act. This amendment provides a common template, based on the statutory language in the Act, to uniformly capture required disclosures.

Some Participating Agencies are concerned about collecting the disclosed information prior to publication of the disclosure template in the **Federal Register**, subject to public comment, in accordance with the requirements of 41 U.S.C. 1707(a). SBA is amending the Policy Directive, as a final rulemaking, to address that concern and to ensure that the disclosures may be collected without further delay. SBA is following the process at 41 U.S.C. 1707(a)(2), to allow a 30-day comment period prior to the effective date of this rulemaking. SBA believes that it is a compelling circumstance to limit the comment period to 30 days because section 4(b) of the Extension Act requires Participating Agencies to implement a due diligence program that considers the disclosed information within 270 days of the Extension Act's passage on September 30, 2022. SBA intends to provide further interpretive guidance on the disclosure template questions to Participating Agencies.

Notice of the Disclosure Template in the Policy Directive for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs

To: The SBIR and STTR Program Managers

Subject: SBIR/STTR Policy Directive

1. *Purpose.* The Small Business Administration (SBA) is updating its Small Business Innovation Research and Small Business Technology Transfer (SBIR/STTR) Policy Directives to include a disclosure template for Participating Agencies to collect statutorily required information from SBIR/STTR applicants.

2. *Authority.* The Small Business Act (15 U.S.C. 638(j) and (p)) requires the SBA Administrator to issue an SBIR and STTR program Policy Directive for the general conduct of the programs. The Small Business Act (15 U.S.C. 638(g)(13)–(17), (o)(17)–(21), and (vv)(2)) requires that Participating Agencies collect disclosures of certain information from SBIR and STTR applicants regarding investments and foreign ties, as relates to the implementation of a due diligence program to assess security risks.

3. *Procurement Regulations.* There are no procurement regulations created though this action.

4. *Personnel Concerned.* This SBIR/STTR Policy Directive serves as guidance for all Federal Government personnel who are involved in the administration of the SBIR and STTR programs, issuance and management of funding agreements or contracts pursuant to the programs, and/or the establishment of goals for small business concerns in research or research and development acquisition or grants.

5. *Originator.* SBA's Office of Investment and Innovation.

This amendment to the SBIR/STTR Policy Directive will be effective on the date shown in the **DATES** section unless SBA receives any significant adverse comments on or before the deadline for comments set forth in the **DATES** section. Significant adverse comments are comments that provide strong justifications why the clarifying amendment to the Policy Directive should not be adopted as written or should be changed further. SBA does not expect to receive any significant adverse comments because the amendment adopts the statutory language regarding the disclosures of information from SBIR/STTR applicants, as relates to the implementation of a due diligence program. Implementation of this change will benefit the public by ensuring that Participating Agencies are using the same template to collect this information and will ensure that Participating Agencies receive information that is useful for determining whether there are security risks posed by particular SBIR or STTR applicants. If SBA receives any significant adverse comments, SBA will publish a notice in the **Federal Register** withdrawing this notice before the effective date.

6. *Date.* Public comments on the proposed amendments to the Policy Directive must be submitted within 30 days following publication in the **Federal Register**.

Authorized By:

Dated: March 28, 2023.

Isabelle Casillas-Guzman,

Administrator.

List of Subjects

SBIR/STTR Policy Directive

1. Amend section 9(a)(5) by adding a new paragraph (13) after paragraph (12).

The addition reads as follows:

9. Responsibilities of SBIR/STTR Agencies and Departments

(a) *General Responsibilities.* Each agency participating in the SBIR/STTR program must:

(1) * * *

* * * * *

(13) Require disclosures from applicants utilizing the questions provided in the template at Appendix III as a part of the agency due diligence program to assess security risks under section 15 U.S.C. 638(vv). Agencies may require small business concerns to certify that the information disclosed is accurate and complete.

2. Amend by adding Appendix III to the end of the SBIR/STTR Policy Directive, as follows:

Appendix III: Required Disclosures of Foreign Affiliations or Relationships to Foreign Countries

Relevant Definitions

Covered individual—the term ''covered individual'' means an individual who—

(A) contributes in a substantive, meaningful way to the scientific development or execution of a research and development project proposed to be carried out with a research and development award from a federal research agency; and

(B) is designated as a covered individual by the federal research agency concerned.

Foreign affiliation—the term ''foreign affiliation'' means a funded or unfunded academic, professional, or institutional appointment or position with a foreign government or government-owned entity, whether full-time, part-time, or voluntary. This includes appointments or positions deemed adjunct, visiting, or honorary with research institutions located in a foreign country of concern.

Foreign country of concern—the term ''foreign country of concern'' means the People's Republic of China, the Democratic People's Republic of Korea, the Russian Federation, the Islamic Republic of Iran, or any other country determined to be a country of concern by the Secretary of State.

Malign foreign talent recruitment program—the term ''malign foreign talent recruitment program'' has the meaning given such term in section 19237 of title 42.

Federally funded award—the term ''federally funded award'' means a Phase I, Phase II (including a Phase II award under subsection (cc)), or Phase III SBIR or STTR award made using a funding agreement.

Applicant or awardee Name: _____

Applicant or awardee EIN (UEI if EIN is unavailable): _____

Responses to disclosure questions may contain trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with an award between the submitter and the Government.

An up-to-date list of countries determined to be countries of concern by the Secretary of State will be maintained and accessible on *SBIR.gov*.

Disclosure Questions

1. Is any owner or covered individual of the applicant or awardee party to any malign foreign talent recruitment program?

☐ Yes ☐ No

If yes, disclose the first and last name of each owner or covered individual, identify their role (*i.e.,* owner or covered individual), and the malign foreign talent recruitment program.

2. Is there a parent company, joint venture, or subsidiary, of the applicant or awardee that is based in or receives funding from, any foreign country of concern?

☐ Yes ☐ No

If yes, disclose the name, full address, applicant or awardee relationships (*i.e.,* parent company, joint venture, or subsidiary) of each entity based in, or funded by, any foreign country of concern.

3. Does the applicant or awardee have any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a foreign state or any foreign entity?

☐ Yes ☐ No

If yes, disclose the name of each enterprise or foreign entity, type of obligation, agreement, or arrangement (*i.e.,* contractual, financial, or other), description of obligation, agreement, or arrangement, and the foreign state(s) and/or the country of the foreign entity (or entities).

4. Is the applicant or awardee wholly owned in a foreign country?

☐ Yes ☐ No

If yes, disclose the foreign country.

5. Does the applicant or awardee have any venture capital or institutional investment?

☐ Yes ☐ No

If yes, proceed to question 5a. If no, proceed to question 6.

5a. Does the investing entity have a general partner or any other individual holding a leadership role who has a foreign affiliation with any foreign country of concern?

☐ Yes ☐ No ☐ Unable to determine

If yes or unable to determine, disclose the venture capital or institutional investing entity's name, the percentage of ownership obtained by the investing entity, and the type of investment (*i.e.,* equity, debt, or combination of equity and debt).

6. During the previous 5-year period, did the applicant or awardee have any technology licensing or intellectual property sales or transfers, to a foreign country of concern?

☐ Yes ☐ No

If yes, disclose the name, address, and country, of the institution or entity that licensed, purchased, or received the technology or intellectual property.

7. Is there any foreign business entity, offshore entity, or entity outside the United States related to the applicant or awardee?

☐ Yes ☐ No

If yes, disclose the entity name, relationship type (*i.e.,* foreign business entity, offshore entity, entity outside the United States), description of the relationship to the applicant or awardee, and entity address and country.

8. Does the applicant or awardee have an owner, officer, or covered individual that has a foreign affiliation with a research institution located in a foreign country of concern?

☐ Yes ☐ No

If yes, disclose the first and last name of each owner, officer, or covered individual that has a foreign affiliation with a foreign country of concern, identify their role (*i.e.,* owner, officer, or covered individual), and the name of the foreign research institution and the foreign country of concern where it is located.

[FR Doc. 2023–06870 Filed 3–31–23; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 3.88 percent for the April–June quarter of FY 2023.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

David Parrish,

Chief, Secondary Markets Division.

[FR Doc. 2023–06816 Filed 3–31–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 12018]

Determination Pursuant to the Foreign Missions Act

The Embassy of Venezuela and its consular posts at Washington, DC and New York, NY formally ceased conducting diplomatic and consular activities in the United States on January 5, 2023. In accordance with Section 205(c) of the Foreign Missions Act (22 U.S.C. 4305(c)) and until further notice, the Department of State's Office of Foreign Missions has assumed sole responsibility for ensuring the protection and preservation of the property of the referenced missions, including but not limited to all real and tangible property, furnishings, archives, and financial assets of the Venezuelan Embassy and its consular posts in the United States, effective at 12:00 p.m. on February 6, 2023.

The Permanent Mission of Venezuela to the Organization of the American States also ceased conducting its activities effective January 5, 2023. In accordance with Section 205(c) of the Foreign Missions Act (22 U.S.C. 4305(c)) and until further notice, the Department of State's Office of Foreign Missions has assumed sole responsibility for ensuring the protection and preservation of the official residence of the Permanent Representative of Venezuela to the Organization of American States, including but not limited to all real and tangible property, furnishings, and archives within such residence, and any associated financial assets in the United States, effective at 12:00 p.m. on February 6, 2023.

In exercise of these custodial responsibilities, and pursuant to the authority vested in the Secretary of State by the laws of the United States including the Foreign Missions Act (22 U.S.C. 4301 *et seq.*) and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 30, 1994, I further determine that entry or access to the following locations and facilities is strictly prohibited unless prior authorization is granted by the Office of Foreign Missions:

- 7 E 51ST ST, New York, NY (Consulate General)
- 2443–2445 Massachusetts Ave. NW, Washington, DC (COM Residence)
- 2409 California ST NW, Washington, DC (Chancery Annex)
- 2437 California ST NW, Washington, DC (Diplomatic Staff Residence)
- 1099 30TH ST NW, Washington, DC (Chancery)
- 2712 32nd ST NW, Washington, DC (Residence of Permanent Representative to the OAS)

Rebecca E. Gonzales,

Director, Office of Foreign Missions, Department of State.

[FR Doc. 2023–06825 Filed 3–31–23; 8:45 am]

BILLING CODE 4711–07–P

DEPARTMENT OF STATE

[Public Notice: 12034]

30-Day Notice of Proposed Information Collection: Disclosure of Violations of the Arms Export Control Act

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to May 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Battista, Directorate of Defense Trade Controls, Department of State, who may be reached at *battistaAL@state.gov* or 202–992–0973.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Disclosure of Violations of the Arms Export Control Act.
- *OMB Control Number:* 1405–0179.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* PM/DDTC.
- *Form Number:* DS–7787.
- *Respondents:* Individuals and companies engaged in the business of exporting, temporarily importing, or brokering, defense articles or defense services who have committed an ITAR violation.
- *Estimated Number of Respondents:* 12,500.
- *Estimated Number of Responses:* 600.
- *Average Time per Response:* 10 hours.
- *Total Estimated Burden Time:* 6,000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- 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.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Directorate of Defense Trade Controls (DDTC), located in the Political-Military Affairs Bureau of the Department of State, encourages voluntary disclosures of violations of the Arms Export Control Act (AECA) (22 U.S.C. 2751 *et seq.*), its implementing regulations, the International Traffic in Arms Regulations (ITAR) (22 CFR 120–130), and any regulation, order, license, or other authorization issued thereunder. The information disclosed is analyzed by DDTC to ultimately determine whether to take administrative action concerning any violation that may have occurred. Voluntary disclosures may be considered a mitigating factor in determining the administrative penalties, if any, that may be imposed. Failure to report a violation may result in circumstances detrimental to the U.S. national security and foreign policy interests and will be an adverse factor in determining the appropriate disposition of such violations. Also, the activity in question might merit referral to the Department of Justice for consideration of whether criminal prosecution is warranted. In such cases, DDTC will notify the Department of Justice of the voluntary nature of the disclosure, but the Department of Justice is not required to give that fact any weight.

ITAR § 127.12 describes the information which should accompany a voluntary disclosure. Historically, respondents to this information collection submitted their disclosures to DDTC in writing via hard copy documentation. However, as part of an IT modernization project designed to streamline the collection and use of information by DDTC, a discrete form has been developed for the submission of voluntary disclosures. This will allow both DDTC and respondents submitting a disclosure to more easily track submissions.

Methodology

This information will be collected by electronic submission.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2023–06818 Filed 3–31–23; 8:45 am]

BILLING CODE 4710–25–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1328X]

City of Tacoma, Department of Public Works, d/b/a Tacoma Rail Mountain Division—Discontinuance of Service Exemption—in Pierce County, Wash.

On March 14, 2023, the City of Tacoma, Wash., Department of Public Works d/b/a Tacoma Rail Mountain Division (TRMW) filed a petition with the Surface Transportation Board (the Board) under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue common carrier service over approximately 3.5 miles of rail line extending from milepost 2.11 at East C Street (USDOT Grade Crossing Inventory Number 396640U) to milepost 5.61 at McKinley Avenue (USDOT Grade Crossing Inventory Number 396659L), in the City of Tacoma, Pierce County, Washington (the Line). The Line traverses U.S. Postal Service Zip Codes 98421, 98404, and 98418.[1]

According to TRMW, the Line has moved only four local carloads in the past seven years—one carload in April 2021 and three carloads in 2016. TRMW states that it would not expect carload volumes to or from the sole customer on the Line, Tacoma Steel, to increase significantly if the Line were to remain active. According to TRMW, TMBL has advised Tacoma Steel of its plan to cease operations on the Line and TRMW expects that Tacoma Steel will not object to this petition for discontinuance authority. TRMW also states that no overhead traffic currently exists on the Line, and that, if such traffic did exist, it could be handled over other through routes.

TRMW states that, to the best of its information and belief, the Line does

[1] TRMW is a division of the City of Tacoma and the non-operating Class III common carrier owner of the Line. The Line is currently operated by another division of the City of Tacoma: its Department of Public Utilities d/b/a Tacoma Rail (TMBL). Separately, TMBL has petitioned the Board for authority to discontinue its operations on the Line. *See City of Tacoma, Dep't of Pub. Utils.—Discontinuance of Serv. Exemption—in Pierce Cnty., Wash.,* AB 1239 (Sub-No. 3X) (STB served Mar. 28, 2023) (88 FR 18,362).

not contain any federally granted rights-of-way and that it will promptly make available to those requesting it any documentation in its possession relevant to the foregoing statement.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 30, 2023.

Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during any subsequent abandonment, this discontinuance does not require an environmental review. *See* 49 CFR 1105.6(c)(5), 1105.8(b).

Any offer of financial assistance (OFA) to subsidize continued rail service under 49 CFR 1152.27(b)(2) will be due no later than July 12, 2023, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner.[2] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by April 13, 2023, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(1)(i).

All filings in response to this notice must refer to Docket No. AB 1328X and must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on TRMW's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208. Replies to the petition are due by April 24, 2023.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245–0294. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

Board decisions and notices are available at *www.stb.gov.*

Decided: March 29, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2023–06942 Filed 3–31–23; 8:45 am]

BILLING CODE 4915–01–P

[2] The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Draft Programmatic Environmental Assessment (PEA) for FAA-Recognized Identification Areas (FRIAs)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces that the Draft Programmatic Environmental Assessment (PEA) for FAA-Recognized Identification Areas (FRIAs) is available for public review and comment.

DATES: Send comments on or before May 3, 2023.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Mike Millard, Aviation Safety Inspector/Environmental Specialist, Flight Standards, General Aviation Operations Branch, AFS–830; telephone 1–844–359–6981; email *9-FAA-Drone-Environmental@faa.gov.*

ADDRESSES: Send comments with the subject line, ''Public Comment on Draft FRIA PEA'' on all submitted correspondence using the following method. Email comments to *9-FAA-Drone-Environmental@faa.gov.*

Privacy: The FAA will post all comments it receives, without change, including any personal information the commenter provides, to the Final PEA, along with the FAA's response to those comments. For additional information, the applicable system of records notice (SORN), DOT/ALL–14, 73 FR 3316 (Jan. 17, 2008), can be reviewed at *https://www.govinfo.gov/content/pkg/FR-2008-01-17/pdf/E8-785.pdf.*

SUPPLEMENTARY INFORMATION:

I. Background

The Draft PEA analyzes and discloses the potential environmental impacts associated with the establishment of FRIAs, pursuant to the National Environmental Policy Act. FRIAs may be established in accordance with 14 CFR part 89. A FRIA is a defined geographic area where unmanned aircraft can be flown without remote identification equipment. Both the unmanned aircraft and the pilot must be located within the FRIA's boundaries throughout the operation. In addition, the pilot of the unmanned aircraft must be able to see it at all times throughout the duration of the flight. Only FAA-recognized Community Based Organizations and educational institutions such as primary and secondary schools, trade schools, colleges, and universities are eligible to request the establishment of a FRIA. If the FAA approves the establishment of a FRIA, the approval will be valid for 48 calendar months.

The environmental impacts of approving these limited, location-specific areas for the operations of unmanned aircraft have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FAA Order 1050.1F, Environmental Impacts: Policies and Procedures.

A Draft PEA has been prepared and, based on this analysis, the FAA has preliminarily determined there will not be a significant impact to the human environment. As a result, an Environmental Impact Statement (EIS) has not been initiated (40 CFR 1501.6). The FAA intends for this PEA to create efficiencies by establishing a framework that can be used for ''tiering,'' where appropriate, to project-specific actions that require additional analysis. As decisions on specific applications are made, to the extent additional NEPA analysis is required, environmental review will be conducted to supplement the analysis set forth in this PEA.

The Draft PEA is available for review online at the following link: *https://www.faa.gov/uas/advanced_operations/nepa_and_drones.*

Comments Invited

The FAA invites interested stakeholders to submit comments on the Draft PEA, as specified in the **ADDRESSES** section of this Notice. Commenters should include the subject line, ''Public Comment on Draft FRIA PEA'' on all comments submitted to the FAA. All comments must be provided in English.

The FAA will accept comments in Word, PDF, or email body. No business proprietary information, copyrighted information, or personally identifiable

information should be submitted in response to this request. Please be aware that comments submitted may be posted on a Federal website or otherwise released publicly.

The most helpful comments reference a specific recommendation, explain the reason for any recommended change, and include supporting information. The FAA will consider all comments received on or before the closing date. The FAA will also consider late filed comments if it is possible to do so without incurring expense or delay.

Issued in Washington, DC.

David M. Menzimer,

Manager, General Aviation Operations Branch, General Aviation and Commercial Division, Office of Safety Standards, Flight Standards Service.

[FR Doc. 2023–06805 Filed 3–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Projects in Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), U.S. Department of Transportation.

ACTION: Notice of limitation on claims for judicial review of actions by TxDOT and Federal agencies.

SUMMARY: This notice announces actions taken by TxDOT and Federal agencies that are final. The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried out by TxDOT pursuant to an assignment agreement executed by FHWA and TxDOT. The actions relate to various proposed highway projects in the State of Texas. These actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of TxDOT and Federal agency actions on the highway projects will be barred unless the claim is filed on or before the deadline. For the projects listed below, the deadline is August 31, 2023. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Patrick Lee, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416–2358; email: *Patrick.Lee@txdot.gov.* TxDOT's normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.

Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below.

The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS) issued in connection with the projects and in other key project documents. The CE, EA, or EIS and other key documents for the listed projects are available by contacting the local TxDOT office at the address or telephone number provided for each project below.

This notice applies to all TxDOT and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101 *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [54 U.S.C. 312501 *et seq.*]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1377] (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction).

The projects subject to this notice are:

1. SH 16 at Kansas City Southern (KCS) Railroad Grade Crossing in Jim Hogg County, Texas. The purpose of the project is to improve the existing SH 16 to provide a safer crossing of the KCS and enhance pedestrian and bicyclist safety within the project limits. On SH 16, the project limits are from Galbraith Street (SH 359) to approximately 600 feet south, and the improvements would include incorporating a curb-and-gutter section and creating a 10-foot-wide shared use pathway in each direction. SH 16 would become elevated up to match the elevation of the KCS railroad with retaining walls. On Hackberry Street, the project limits are from the intersection of SH 16 and Hackberry Street to approximately 210 feet west of the SH 16/Hackberry Street intersection, and the improvements would include sidewalk improvements, realigning the roadway, and transitioning from existing grade to match the grade at SH 16. A curb-and-gutter system would also be created. On Maria Street, the project limits are from the intersection of Hackberry Street and Maria Street to approximately 150 feet southwest of the Hackberry Street/Maria Street

intersection, and the improvements would include realigning the roadway and transitioning from existing grade to match the grade at SH 16. A curb-and-gutter system would also be created. On Texas Street, the project limits are from the intersection of SH 16 and Texas Street to approximately 400 feet south of the SH 16/Texas Street intersection, and the improvements would include sidewalk improvements, realigning the roadway, and transitioning from existing grade to match the grade at SH 16. A curb-and-gutter system would also be created. The proposed project length is approximately 1,300 feet (SH 16, Hackberry, Maria, and Texas Streets combined). The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on December 20, 2022, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Pharr District Office at 600 W. Interstate 2, Pharr, TX 78577; telephone: (956) 702–6100.

2. County Road (CR) 118 at Cottonwood Creek from CR 119 to CR 110 in Williamson County, Texas. The project will realign CR 118 at a new location, demolishing the existing bridge and approaches over Cottonwood Creek and building a new roadway on a new location to the south of the existing CR 118 with a new bridge and approaches over Cottonwood Creek. The project is approximately 0.52 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on January 23, 2023, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; telephone: (512) 832–7000.

3. US 281 (Military Highway) from FM 732 to FM 1421 in Cameron County, Texas. The project consists of reconstructing and widening the existing two-lane rural US 281 (Military Highway) to a four-lane rural highway with a left-turn lane and shoulders. The proposed roadway facility would include four 12-foot travel lanes with two travel lanes in each direction and 8-foot shoulders on each side of the roadway. The proposed roadway facility would also include a 14-foot turn lane. The project length is approximately 5.85 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on January 31, 2023, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Pharr District Office 600 W. Interstate 2, Pharr, TX 78577; telephone: (956) 702–6100.

4. SH 107 from SH 495 to FM 2220 in Hidalgo County, Texas. The project would widen SH 107 and provide a raised median. The proposed SH 107 roadway from SH 495 to FM 2220 would generally consist of three 12-foot-wide travel lanes in each direction with 2-foot-wide inside and outside shoulders. Directions of travel would be separated by an 18-foot-wide raised median. From SH 495 to FM 681, a 5-foot-wide sidewalk would be constructed on the west side of the roadway and a 12-foot-wide shared use path would be constructed on the east side of the roadway. From FM 681 to FM 2220, a dedicated 10-foot-wide bicycle lane would be added to both sides of the roadway. A 5-foot sidewalk would be constructed on both sides of the roadway, and sidewalk ramps would be placed at all intersection corners. The project length is approximately 9.9 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on February 8, 2023, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Pharr District Office 600 W. Interstate 2, Pharr, TX 78577; telephone: (956) 702–6100.

5. US 259 from SH 204 to Rusk County Line in Nacogdoches County, Texas. The project would widen US 259 to include two 12-foot northbound travel lanes and two 12-foot southbound travel lanes, 10-foot outside shoulders, and a 16-foot continuous two-way left-turn lane separating northbound and southbound travel lanes. The project length is approximately 6.87 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on February 15, 2023, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Lufkin District Office at 1805 N. Timberland Drive, Lufkin, TX 75901; telephone: (936) 633–4321.

6. FM 1417 from OB Groner Road to US 75 in Grayson County, Texas. The proposed project includes widening a non-freeway to a six-lane divided highway consisting of raised medians, curb and gutters, grading, structures, pavement, signals, signing and pavement markings. The proposed facility would include six dedicated 12-foot-wide travel lanes and include dedicated 12-foot-wide right turn lanes approaching major intersections. Proposed access is at-grade throughout the project corridor. The proposed facility includes 16-foot wide raised, grassy medians. Proposed drainage would include curb and gutters for the entire length of the project. The proposed facility also would include a 10.5-foot-wide pedestrian realm berm with a 6-foot-wide sidewalk located on the apex of the berm, which extend for the entire length of the project area. The proposed facility would include a new BNSF Railroad Spur overpass structure at a higher elevation to meet vertical clearance requirements with a 6-foot-wide pedestrian realm consisting of raised sidewalk. There will be work on cross streets as well. The total project length is approximately 2.424 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on February 22, 2023, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Paris District Office at 1365 North Main Street, Paris, TX 75460; telephone: (903) 737–9206.

7. The FM 3391 project would widen, reconstruct, and upgrade the facility from IH 35W to east of CR 602 in Johnson County, Texas. The 2.9-mile project would extend from existing northbound frontage road of IH 35W to approximately 1,490 feet east of CR 602. The existing FM 3391 between IH 35W and South Hurst Road would be improved from a five-lane undivided section to six-lane divided section and from a two-lane undivided section to four-lane divided section between South Hurst Road to east of CR 602. The proposed project would incorporate bicycle and pedestrian facilities. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on February 24, 2023, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in

the TxDOT project file are available by contacting the TxDOT Fort Worth District Office at 2501 SW Loop 820, Fort Worth, TX 76133; telephone: (817) 370–6772.

8. FM 70/SH 286 passing lanes, FM 70 from SH 286 to US 77, and SH 286 from south of FM 244 to FM 70 in Nueces County, Texas. The proposed project would widen the existing FM 70 and SH 286 roadways to add 12-foot-wide intermittent passing lanes and 10-foot-wide shoulders for approximately 25 miles. The intersection of FM 70 and SH 286 would be improved by adding a right turn lane from southbound SH 286 to westbound FM 70. In the eastbound direction, the proposed project would add passing lanes in five areas along FM 70. In the westbound direction, the proposed project would add passing lanes in four areas along FM 70. Along SH 286, the proposed project would add one passing lane in both the northbound and southbound directions. There are 11 total proposed passing lanes. Passing lanes would be 12-foot wide. Additionally, drainage improvements to address flooding issues on the existing roadway are proposed throughout the project length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), the Finding of No Significant Impact (FONSI) issued on January 2, 2023, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting the TxDOT Corpus Christi District Office at 1701 South Padre Island Drive, Corpus Christi, TX 78416; telephone: (361) 808–2500.

9. FM 973 from SH 130 to US 290 in Travis County, Texas. The project will expand FM 973 from two to six travel lanes, three in each direction, and include a grassy median and turn lanes at various locations. The project also includes drainage improvements, overpasses, sidewalks, and shared-use paths. The project is 5.7 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), the Finding of No Significant Impact (FONSI) issued on January 18, 2023, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; telephone: (512) 832–7000.

10. Borderland Expressway Project (formerly known as the Northeast Parkway Project) on State Loop 375 east of Railroad Drive Overpass to Farm-to-Market Road 3255 (Martin Luther King Jr. Boulevard) at the Texas-New Mexico border, in El Paso County, Texas. The proposed project would be a 10.8-mile long, four-lane, limited access, new location roadway in northeast El Paso County. The proposed project would be built in three phases as follows: Phase 1 would construct frontage roads between Railroad Drive and Business US 54 (Dyer Street). The second phase would construct the mainlanes between Railroad Drive and FM 3255 (MLK Jr. Boulevard). In the third phase, the mainlanes would be built from US 54 (Dyer Street) to Loop 375. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), the Finding of No Significant Impact (FONSI) issued on January 31, 2023, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting the TxDOT El Paso District Office at 13301 Gateway Boulevard West El Paso, TX 79928; telephone: (915) 790–4200.

11. FM 2964 (Rhones Quarter Road) from SH 110 to FM 346 in Smith County, Texas. The project would widen and reconstruct FM 2964 to a four-lane curb-an-gutter facility divided by a 14-foot, two-way left-turn lane. All travel lanes would be 12-feet wide. The project would include an 8-foot wide Shared-Use Path (SUP) on both sides of the road throughout the project limits, behind concrete curb-and-gutter which will accommodate drainage. The project proposes to realign the FM 2964 intersection with Shiloh Road, at Thistle Drive—approximately 1,200-feet west of its current location. The project would cul-de-sac FM 2964 at its existing intersection with Shiloh Road. South of Shiloh Road, the realigned section of FM 2964 would connect to the existing FM 2964 roadway south of Libbie Street. The project proposes to realign the existing FM 2964 intersection with Barbee Road (CR 2170), at Oscar Burkett Road (CR 2191)—approximately 450 feet north of its current location. The project would cul-de-sac existing Barbee Road at FM 2964. The project proposes to widen the existing bridge over Toll 49 to the east, to include four 12-foot travel lanes, a 12- to 16-foot left-turn lane, and 8-foot SUP. The project length is approximately 5.38 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), the Finding of No Significant Impact (FONSI) issued on February 24, 2023, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting the TxDOT Tyler District Office at 2709 W. Front St., Tyler, Texas 75702; telephone: (903) 510–9100.

Authority: 23 U.S.C. 139(l)(1).

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2023–06817 Filed 3–31–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2023–0005]

Proposed Information Collections; Comment Request (No. 89)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the continuing or proposed information collections listed below in this document.

DATES: We must receive your written comments on or before June 2, 2023.

ADDRESSES: You may send comments on the information collections described in this document using one of these two methods:

- *Internet*—To submit comments electronically, use the comment form for this document posted on the ''*Regulations.gov*'' e-rulemaking website at *https://www.regulations.gov* within Docket No. TTB–2023–0005.
- *Mail*—Send comments to the Paperwork Reduction Act Officer, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit separate comments for each specific information collection described in this document. You must reference the information collection's title, form or recordkeeping requirement number (if any), and OMB control number in your comment.

You may view copies of this document, the relevant TTB forms, and any comments received at *https://www.regulations.gov* within Docket No. TTB–2022–0002. TTB has posted a link

to that docket on its website at *https://www.ttb.gov/rrd/information-collection-notices.* You also may obtain paper copies of this document, the listed forms, and any comments received by contacting TTB's Paperwork Reduction Act Officer at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; 202–453–1039, ext. 135; or complete the Regulations and Rulings Division contact form at *https://www.ttb.gov/contact-rrd.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of a continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections described below, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this document will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether an information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden 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 the requested information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information has a valid OMB control number.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms, letterhead applications or notices, recordkeeping requirements, questionnaires, or surveys:

OMB Control No. 1513–0041

Title: Distilled Spirits Plants—Records and Monthly Reports of Processing Operations.

TTB Form Number: TTB F 5110.28.

TTB REC Number: TTB REC 5110/03.

Abstract: In general, the Internal Revenue Code of 1986, as amended (IRC), at 26 U.S.C. 5001, imposes a Federal excise tax on distilled spirits produced or imported into the United States. Additionally, the IRC at 26 U.S.C. 5207 requires that distilled spirits plant (DSP) proprietors keep records and submit reports regarding their production, storage, denaturation, and processing operations in such form and manner as the Secretary of the Treasury (the Secretary) by regulation prescribes. Under that IRC authority, the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations in 27 CFR part 19 require DSP proprietors to keep records regarding their processing operations, as well as any wholesale liquor dealer or taxpaid storeroom operations they conduct. The part 19 regulations also require DSP proprietors to submit monthly reports based on those records, using form TTB F 5110.28. TTB uses the collected information to ensure proper tax collection. TTB also aggregates the collected information to produce generalized distilled spirits statistical reports for public release.

Current Actions: There are no program changes to this information collection, and TTB is submitting for extension purposes only. As for adjustments, due to a change in agency estimates resulting from continued growth in the number of DSPs in the United States, TTB is increasing the estimated number of annual respondents, total responses, and burden hours associated with this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits; State and local governments.

- *Number of Respondents:* 4,900.
- *Average Responses per Respondent:* 12 (once per month).
- *Number of Responses:* 58,800.
- *Average Per-response Burden:* 2 hours (1 hour recordkeeping and 1 hour reporting).
- *Total Burden:* 117,600 hours.

OMB Control No. 1513–0058

Title: Usual and Customary Business Records Maintained by Brewers.

TTB Recordkeeping Number: TTB REC 5130/1.

Abstract: The IRC at 26 U.S.C. 5415 requires brewers to keep records in such form and containing such information as the Secretary prescribes by regulation as necessary to protect the revenue. In addition, the IRC at 26 U.S.C. 5555 requires any person liable for Federal excise tax on alcohol beverages, including beer, to keep records, render statements, make returns, and comply with rules and regulations as prescribed by the Secretary. Under those IRC authorities, the TTB regulations in 27 CFR part 25 require brewers to keep usual and customary business records that allow TTB to verify various brewery activities. These activities include, for example, the quantities of raw materials received at a brewery, the quantity of beer and cereal beverages produced at and removed from a brewery taxpaid or without payment of tax, and the quantity of beer previously removed subject to tax returned to the brewery.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the estimated number of annual respondents and responses to this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

- *Number of Respondents:* 13,910.
- *Average Responses per Respondent:* 1 (one) per year.
- *Number of Responses:* 13,910.
- *Average per-response and Total Burden:* This information collection consists of usual and customary records kept by respondents during the normal course of business, regardless of any regulatory requirement to do so. As such, under 5 CFR 1320.3(b)(2), this information collection imposes no additional burden on respondents.

OMB Control No. 1513–0059

Title: Usual and Customary Business Records Relating to Tax-Free Alcohol.

TTB Recordkeeping Number: TTB REC 51503.

Abstract: In general, the IRC at 26 U.S.C. 5001 imposes Federal excise tax on distilled spirits produced in or imported into the United States. However, under the IRC at 26 U.S.C. 5214(a)(2) and (a)(3), distilled spirits may be withdrawn free of tax for nonbeverage purposes for use by Federal, State, and local governments, and for use by certain educational organizations and institutions, research laboratories, hospitals, blood banks, sanitariums, and nonprofit clinics,

subject to regulations prescribed by the Secretary. In addition, the IRC at 26 U.S.C. 5275 requires persons that procure or use distilled spirits withdrawn free of tax under sections 5214(a)(2) and (a)(3) to keep records and make reports regarding the receipt and use of such spirits as the Secretary requires by regulation. Under that IRC authority, in order to account for tax-free spirits and prevent their diversion to taxable beverage use, the TTB regulations in 27 CFR part 22 require tax-free alcohol users to maintain certain usual and customary business records regarding the receipt, loss, shipment, destruction, return, consignment, and inventories of such alcohol. Such accountability is necessary to protect the revenue.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

- *Number of Respondents:* 5,600.
- *Average Responses per Respondent:* 1 (one) per year.
- *Number of Responses:* 5,600.
- *Average per-response and Total Burden:* This information collection consists of usual and customary records kept by respondents during the normal course of business, regardless of any regulatory requirement to do so. As such, under 5 CFR 1320.3(b)(2), this information collection imposes no additional burden on respondents.

OMB Control No. 1513–0071

Title: Tobacco Products Importer or Manufacturer—Record of Large Cigar Wholesale Prices.

TTB Recordkeeping Number: TTB REC 5230/1.

Abstract: In general, the IRC at 26 U.S.C. 5701 imposes Federal excise taxes on tobacco products and cigarette papers and tubes, and, as described at 26 U.S.C. 5701(a)(2), the excise tax on large cigars is based on a percentage of the price at which such cigars are sold by the manufacturer or importer. The IRC at 26 U.S.C. 5741 also requires every manufacturer and importer of tobacco products to keep records in such manner as the Secretary shall by regulation prescribe. Under those IRC authorities, the TTB regulations at 27 CFR 40.187 and 41.181 require that manufacturers and importers of large cigars maintain certain records regarding the price for which those cigars are sold. The required records are necessary as they provide a basis upon which to verify that the appropriate amount of Federal excise tax is paid on large cigars.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

- *Number of Respondents:* 300.
- *Average Responses per Respondent:* 1 (one) per year.
- *Number of Responses:* 300.
- *Average per-response Burden:* 2.33 hours.
- *Total Burden:* 699 hours.

OMB Control No. 1513–0119

Title: Certification of Proper Cellar Treatment for Imported Natural Wine.

Abstract: Under the IRC at 26 U.S.C. 5382, importers of natural wine produced after December 31, 2004, must provide the Secretary with a certification, accompanied by an affirmed laboratory analysis, that the practices and procedures used to produce the wine constitute proper cellar treatment. That IRC section also contains alternative certification requirements or exemptions for natural wine produced and imported under certain international agreements, as well as for such wine imported by an owner or affiliate of a domestic winery. In addition, the Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205 vests the Secretary with authority to prescribe regulations regarding the identity and quality of alcohol beverages. Under those authorities, the TTB wine labeling regulations in 27 CFR part 4 and its alcohol beverage import regulations in 27 CFR part 27 implement the proper cellar treatment certification requirement for imported natural wine.

Current Actions: There are no program changes associated with this information collection at this time, and TTB is submitting it for extension purposes only. As for adjustments, due to a change in agency estimates, TTB is decreasing the number of annual responses, responses, and burden hours associated with this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

- *Number of Respondents:* 20.
- *Average Responses per Respondent:* 1 (one) per year.
- *Number of Responses:* 20.
- *Average per-response Burden:* 20 minutes.
- *Total Burden:* 7 hours.

OMB Control No. 1513–0138

Title: Tax Class Statement Required on Hard Cider Labels.

Abstract: In general, the IRC at 26 U.S.C. 5041 imposes six Federal excise tax rates on wine based on a wine's alcohol and carbon dioxide content, and the lowest of those rates is the hard cider tax rate, as listed in section 5041(b)(6). The IRC at 26 U.S.C. 5368(b) also provides that wine can only be removed in containers bearing the marks and labels showing compliance with chapter 51 of the IRC as the Secretary may by regulation prescribe. Beginning January 1, 2017, section 335(a) of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act, Pub. L. 144–113) modified the definition of hard cider in IRC section 5041(g) to broaden the range of products eligible for the hard cider tax rate. However, under the authority of the Federal Alcohol Administration (FAA) Act, TTB's wine labeling regulations in 27 CFR part 4 allow the term ''hard cider'' to appear on the labels of products that do not meet the IRC's definition of ''hard cider'' for tax purposes. In light of that difference, in order to adequately identify products eligible for the hard cider tax rate, the TTB regulations in 27 CFR parts 24 and 27 provide that the tax class statement, ''Tax class 5041(b)(6),'' appear on containers of domestic and imported wines, respectively, which are eligible for that tax rate. The placement of such a statement on such labels evidences compliance with the IRC's statutory requirements and identifies the Federal excise tax rate the taxpayer is applying to the product.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the estimated number of annual respondents, responses, and burden hours associated with this collection, but is increasing the estimated number of responses per respondent.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

- *Number of Respondents:* 20.
- *Average Responses per Respondent:* 2 per year.
- *Number of Responses:* 40.
- *Average per-response Burden:* 1 hour.
- *Total Burden:* 40 hours.

OMB Control No. 1513–NEW

Title: Combined Alcohol Excise Tax Return and Simplified Operations Report—Pilot Test.

TTB Form Number: To be determined.

Abstract: Under the IRC at 26 U.S.C. 5061, the Federal excise tax on distilled spirits, wine, and beer is collected on the basis of a return which taxpayers file on a semi-monthly, quarterly, or annual basis, depending on the amount of their annual tax liability (see 26 U.S.C. 5061(d)(4)). In addition, under the IRC at 26 U.S.C. 5207, 5367, and 5415, taxpayers for distilled spirits, wine, and beer respectively, must furnish reports of operations and transactions as the Secretary prescribes by regulation.

Currently, under those IRC authorities, the TTB regulations in 27 CFR chapter I require alcohol excise taxpayers to report their excise tax liability using form TTB F 5000.24, Excise Tax Return, approved under OMB No. 1513–0083. In addition, alcohol excise taxpayers must file operations reports accounting for their production, removals, losses, and certain other matters that effect their excise tax liability. Distilled spirits plant proprietors file up to four separate operations reports on a monthly basis on TTB F 5110.11, TTB F 5110.28, TTB F 5110.40, and TTB F 5110.43, approved under OMB Nos. 1513–0039, 1513–0041, 1513–0047, and 1513–0049, concerning, respectively, storage, processing, production, and denaturing operations. Wine premises proprietors file monthly operations reports on TTB F 5120.17, approved under OMB No. 1513–0053. Brewers, depending on their annual tax liability, file operations reports either on a monthly basis using TTB F 5130.9 or on a quarterly basis using TTB F 5130.9 or TTB F 5130.26, both of which are approved under OMB No. 1513–0007.

As part of TTB's efforts to lower respondent burden, the Bureau is developing a combined tax return and simplified operations report and intends to pilot the use of it with alcohol excise taxpayers. Under this pilot, alcohol excise taxpayers will submit a letterhead application to join the pilot program as an alternative method to their filing the current tax return and operations reports under existing regulatory requirements. Once approved, taxpayers participating in the pilot program will file their combined alcohol excise return and simplified operations report under the due dates currently applicable to their excise tax returns.

The collected information will allow TTB to identify the excise taxpayer, the amount of taxes due, and the amount of payments made. Additionally, the collected information will allow TTB to identify the amount of distilled spirits, wine, or beer the taxpayer produced, removed, transferred, and disposed of during the reporting period, which effects the amount of alcohol excise tax due, while reducing the overall burden of filing separate tax returns and operations reports.

Current Actions: This is a new information collection pilot program and, as such, there are no program changes or adjustments associated with it.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

- *Number of Respondents:* 10,000.
- *Average Responses per Respondent:* 5.8.
- *Number of Responses:* 58,000.
- *Average per-response Burden:* 1.0 hour.
- *Total Burden:* 58,000 hours.

Dated: March 28, 2023.

Amy R. Greenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2023–06762 Filed 3–31–23; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunities: Bank Enterprise Award (BEA) Program; FY 2023 Funding Round

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting Applications for the Fiscal Year (FY) 2023 Funding Round of the Bank Enterprise Award Program (BEA Program).

Announcement Type: Announcement of funding opportunity.

Funding Opportunity Number: CDFI–2023–BEA.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.021.

Dates:

TABLE 1—FY 2023 BEA PROGRAM FUNDING ROUND—KEY DATES FOR APPLICANTS

Description	Deadline	Time (eastern time—ET)	Contact information
Grant Application Package/SF–424 Mandatory (Application for Federal Assistance).	May 2, 2023	11:59 p.m	Contact *Grants.gov* at 800–518–4726 or *support@grants.gov.*
Submission Method: Electronically via Grants.gov.			
Last day to register a user and organization in AMIS	May 2, 2023	5 p.m	CDFI Fund IT Helpdesk: 202–653–0422 or IT Award Management Information System (AMIS) Service Request.[1]
Last day to enter, edit or delete BEA transactions, and verify addresses/census tracts in AMIS.	May 30, 2023	5 p.m	CDFI Fund IT Helpdesk: 202–653–0422 or IT AMIS Service Request.[2]
Last day to contact BEA Program Staff re: BEA Program Application materials.	May 30, 2023	5 p.m	CDFI Fund BEA Helpdesk: 202–653–0421 or BEA AMIS Service Request.[3]
Last day to contact Certification, Compliance Monitoring and Evaluation (CCME) staff.	May 30, 2023	5 p.m	CCME Helpdesk: 202–653–0423 or Compliance and Reporting AMIS Service Request.[4]
Last day to contact IT Help Desk re: AMIS support and submission of the FY 2023 BEA Program Electronic Application in AMIS.	June 1, 2023	5 p.m	CDFI Fund IT Helpdesk: 202–653–0421 or IT AMIS Service Request.[5]
FY 2023 BEA Program Electronic Application	June 1, 2023	5 p.m	CDFI Fund IT Helpdesk: 202–653–0422 or IT AMIS Service Request.[6]
Submission Method: Electronically via AMIS.			

[1] For Information Technology support, the preferred method of contact is to submit a Service Request (SR) within AMIS. For the SR, select ''Technical Issues'' from the Program drop down menu.

[2] Ibid.

[3] For questions regarding completion of the BEA Application materials, the preferred electronic method of contact with the BEA Program Office is to submit a Service Request (SR) within AMIS. For the SR, select ''BEA Program'' from the Program drop down menu of the Service Request.
[4] For Compliance and Reporting related questions, the preferred electronic method of contact is to submit a Service Request (SR) within AMIS. For the SR, select ''Compliance and Reporting'' from the Program drop down menu of the Service Request.
[5] For Information Technology support, the preferred method of contact is to submit a Service Request (SR) within AMIS. For the SR, select ''Technical Issues'' from the Program drop down menu of the Service Request.
[6] Ibid.

Executive Summary: This NOFA is issued in connection with the fiscal year (FY) 2023 funding round of the Bank Enterprise Award Program (BEA Program). The BEA Program is administered by the U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund). Through the BEA Program, the CDFI Fund awards formula-based grants to depository institutions that are insured by the Federal Deposit Insurance Corporation (FDIC) for increasing their levels of loans, investments, Service Activities, and technical assistance to residents and businesses in the most economically Distressed Communities, and financial assistance and technical assistance to Certified Community Development Financial Institutions (CDFIs) through equity investments, equity-like loans, grants, stock purchases, loans, deposits, and other forms of assistance, during a specified period.

I. Program Description

A. History: The CDFI Fund was established by the Riegle Community Development and Regulatory Improvement Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs.

The BEA Program complements the community development activities of banks and thrifts (collectively referred to as banks for purposes of this NOFA), by providing financial incentives to expand investments in CDFIs and to increase lending, investment, and Service Activities within Distressed Communities. Providing monetary awards to banks for increasing their community development activities leverages the CDFI Fund's dollars and puts more capital to work in Distressed Communities throughout the nation.

B. Authorizing Statutes and Regulations: The BEA Program was authorized by the Bank Enterprise Award Act of 1991, as amended. The regulations governing the BEA Program can be found at 12 CFR part 1806 (the Interim Rule). The Interim Rule provides the evaluation criteria and other requirements of the BEA Program. Detailed BEA Program requirements are also found in the application materials associated with this NOFA (the Application). The CDFI Fund encourages interested parties and Applicants to review the authorizing statute, Interim Rule, this NOFA, the Application, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Administrative Requirements) for a complete understanding of the BEA Program. Capitalized terms in this NOFA are defined in the authorizing statute, the Interim Rule, this NOFA, the Application, or the Uniform Administrative Requirements. Details regarding Application content requirements are found in the Application and related materials. Application materials can be found on *Grants.gov* and the CDFI Fund's website at *www.cdfifund.gov/bea.*

C. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200): The Uniform Administrative Requirements codify financial, administrative, procurement, and program management standards that Federal award-making agencies and Award Recipients must follow. When evaluating award applications, awarding agencies must evaluate the risks to the program posed by each Applicant, and each Applicant's merits and eligibility. These requirements are designed to ensure that Applicants for Federal assistance receive a fair and consistent review prior to an award decision. This review will assess items such as the Applicant's financial stability, quality of management systems, history of performance, and audit findings. In addition, the Uniform Requirements include guidance on audit requirements and other award requirements with which Award Recipients must comply.

D. Priorities: Through the BEA Program, the CDFI Fund specifies the following priorities:

1. Estimated Award Amounts: The award percentage used to derive the estimated award amount for Applicants that are CDFIs is three times greater than the award percentage used to derive the estimated award amount for Applicants that are not CDFIs;

2. Priority Factors: Priority Factors will be assigned based on an Applicant's asset size, as described in Section V.A.14 of this NOFA (Application Review Information: Priority Factors); and

3. Priority of Awards: The CDFI Fund will rank Applicants in each category of Qualified Activity according to the priorities described in Section V.A.16. of this NOFA (Application Review Information: Award Percentages, Award Amounts, Application Review Process, Selection Process, Programmatic Financial Risk, and Application Rejection), and specifically parts V.B.2: Selection Process, V.B.3: Programmatic and Financial Risk, and V.B.4: Persistent Poverty Counties.

E. Baseline Period and Assessment Period Dates: A BEA Program Award is based on an Applicant's increase in Qualified Activities from the Baseline Period to the Assessment Period, as reported on an individual transaction basis in the Application. For the FY 2023 funding round, the Baseline Period is (January 1, 2020 through June 30, 2021), and the Assessment Period is (July 1, 2021 through December 31, 2022).

F. Funding Limitations: The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA. The CDFI Fund also reserves the right to reallocate funds from the amount that is available through this NOFA to other CDFI Fund programs, or to reallocate remaining funds to a future BEA Program funding round, particularly if the CDFI Fund determines that the number of awards made through this NOFA is fewer than projected.

G. Persistent Poverty Counties: Pursuant to the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), Congress mandated that at least ten percent of the CDFI Fund's appropriations be directed to counties that meet the criteria for ''Persistent Poverty'' designation. Persistent Poverty Counties (PPCs) are defined as any county, including county equivalent areas in Puerto Rico, that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990, 2000, and 2010 decennial censuses, and the 2016–2020 5-year data series available from the American Community Survey of the Census Bureau or any other territory or possession of the United States that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990, 2000 and 2010

Island Areas Decennial Censuses, or equivalent data, of the Bureau of the Census and published by the CDFI Fund at: *https://www.cdfifund.gov/sites/cdfi/files/2023-03/PPC_2020_ACS_Jan20_2023.xlsx.* Applicants that apply under this NOFA will be required to indicate the minimum and maximum percentage of the BEA Program Award that the Applicant will commit to investing in PPCs.

II. Federal Award Information

A. Funding Availability: The CDFI Fund expects to award up to $70 million for the FY 2023 BEA Program Award round under this NOFA. The CDFI Fund reserves the right to award in excess of said funds under this NOFA, provided that the appropriated funds are available. The CDFI Fund reserves the right to impose a minimum or maximum award amount; however, under no circumstances will an award be higher than $1 million for any Award Recipient.

B. Types of Awards: BEA Program Awards are made in the form of grants.

C. Anticipated Start Date and Period of Performance: The CDFI Fund anticipates the period of performance for the FY 2023 funding round will begin in the fall of calendar year 2023. Specifically, the Period of Performance begins on the Federal Award Date and will conclude at least one (1) full year after the Federal Award Date as further specified in the BEA Program Award Agreement (Award Agreement), during which the Award Recipient must meet the performance goals set forth in the Award Agreement.

D. Eligible Activities: Eligible activities for BEA Program Applicants are referred to as Qualified Activities and are defined in the Interim Rule to include CDFI Related Activities, Distressed Community Financing Activities, and Service Activities (12 CFR 1806.103).

CDFI Related Activities (12 CFR 1806.103) means CDFI Equity and CDFI Support Activities. CDFI Equity consists of Equity Investments, Equity-Like Loans, and Grants. CDFI Support Activities includes Loans, Deposits and Technical Assistance.

Distressed Community Financing Activities (12 CFR 1806.103) means Consumer Loans and Commercial Loans and Investments. Consumer Loans include Affordable Housing Loans; Education Loans; Home Improvement Loans; and Small Dollar Consumer Loans. Commercial Loans and Investments includes Affordable Housing Development Loans and related Project Investments; Commercial Real Estate Loans and related Project Investments; and Small Business Loans and related Project Investments. Service Activities (12 CFR 1806.103) include Deposit Liabilities, Financial Services, Community Services, Targeted Financial Services, and Targeted Retail Savings/Investment Products.

When calculating BEA Program Award amounts, the CDFI Fund will only consider the amount of a Qualified Activity that has been fully disbursed, subject to the requirements outlined in Section VI. of this NOFA, in the case of Commercial Real Estate Loans and related Project Investments, the total principal amount of the transaction must be $10 million or less to be considered a Qualified Activity. Notwithstanding the foregoing, the CDFI Fund, in its sole discretion, may consider transactions with a total principal value of over $10 million, subject to review.

An activity funded with prior BEA Program Award dollars, or funded to satisfy requirements of an Award Agreement from a prior BEA Program award or an agreement under any CDFI Fund program, shall not constitute a Qualified Activity for the purposes of calculating or receiving an award.

E. Distressed Community: A Distressed Community must meet certain minimum geographic area and eligibility requirements, which are defined in the Interim Rule at 12 CFR 1806.103 and more fully described in 12 CFR 1806.401. Applicants should use the CDFI Information Mapping System (CIMS) mapping tool to determine whether a Baseline Period activity or Assessment Period activity is located in a qualified Distressed Community. The CIMS mapping tool can be accessed through AMIS or the CDFI Fund's website at *https://www.cdfifund.gov/Pages/mapping-system.aspx.* The CIMS mapping tool contains a step-by-step training manual on how to use the tool. In addition, further instructions to determine whether an activity is located in a qualified BEA Distressed Community can be located at; *https://www.cdfifund.gov/programs-training/programs/bank-enterprise-award/apply-step:,* when selecting the BEA Program Application CIMS3 Instructions document in the ''Application Materials'' section of the BEA web page on the CDFI Fund's website. If you have any questions or problems with accessing the CIMS mapping tool, please contact the CDFI Fund IT Help Desk by telephone at (202) 653–0300, or by IT AMIS Service Request.

Please note that a Distressed Community as defined by the BEA Program is not the same as an Investment Area as defined by the CDFI Program, a Low-Income Community as defined by the NMTC Program, or an Area of Economic Distress as defined by the Capital Magnet Fund Program.

1. Designation of Distressed Community by a CDFI Partner: CDFI Partners that receive CDFI Support Activities in the form of loans, Technical Assistance or deposits from an Applicant must be integrally involved in a Distressed Community. Applicants must provide evidence that each CDFI Partner that is the recipient of CDFI Support Activities is integrally involved in a Distressed Community, as noted in the Application. CDFI Partners that receive Equity Investments, Equity-Like Loans or Grants are not required to demonstrate Integral Involvement. Additional information on Integral Involvement can be found in Section V. of this NOFA.

2. Distressed Community Determination by a BEA Applicant: Applicants applying for a BEA Program Award for performing Distressed Community Financing Activities or Service Activities must verify that addresses of both Baseline Period and Assessment Period activities are in Distressed Communities when completing their Application.

A BEA Applicant shall determine an area is a Distressed Community by:

a. selecting a census tract where the Qualified Activity occurred that meets the minimum area and eligibility requirements; or

b. selecting the census tract where the Qualified Activity occurred, plus one or more census tracts directly contiguous to where the Qualified Activity occurred that when considered in the aggregate, meet the minimum area and eligibility requirements set forth in this section.

F. Award Agreement: Each Award Recipient under this NOFA must electronically sign an Award Agreement via AMIS prior to payment of the award proceeds by the CDFI Fund. The Award Agreement contains the terms and conditions of the award. For further information, see Section VI. of this NOFA.

G. Use of Award: It is the policy of the CDFI Fund that BEA Program Awards may not be used by Award Recipients to recover overhead or Indirect Costs. The Award Recipient may use up to 15 percent of the total BEA Program Award amount on Qualified Activities as Direct Administrative Expenses. ''Direct Administrative Expenses'' shall mean Direct Costs, as described in section 2 CFR 200.413 of the Uniform Requirements, which are incurred by the Award Recipient to carry out the Qualified Activities. Such costs must be able to be specifically identified with

the Qualified Activities and not also recovered as Indirect Costs. ''Indirect Costs'' means costs or expenses defined in accordance with section 2 CFR 200.1 of the Uniform Requirements. In addition, the Award Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements,[7] with respect to any Direct Costs.

III. Eligibility Information

A. Eligible Applicants: For the purposes of this NOFA, the following table sets forth the eligibility criteria to receive a BEA Program award from the CDFI Fund.

TABLE 2—ELIGIBILITY REQUIREMENTS FOR APPLICANTS

Criteria	Description
Eligible Applicants	• The depository institution holding company of an Insured Depository Institution may not apply on behalf of an Insured Depository Institution. Applications received from depository institution holding companies will be disqualified. • Eligible Applicants for the BEA Program must be Insured Depository Institutions, as defined in the Interim Rule. • For the FY 2023 funding round, an Applicant must have been FDIC-insured as of the first day of the Baseline Period, January 1, 2020, and maintain its FDIC-insured status at the time of Application to be eligible for consideration for a BEA Program Award under this NOFA.
CDFI Applicant	• For the FY 2023 funding round, an eligible Certified-CDFI Applicant is an Insured Depository Institution that is certified as of the publication date of this NOFA in the **Federal Register**, or has submitted a Certification Application by September 30, 2022 and maintains or receives its status as a Certified CDFI at the time BEA Program Awards are announced. • No Applicant may receive a FY 2023 BEA Program Award, either directly or through a community partnership, if it has: (1) an application pending for assistance under the CDFI Program; (2) been awarded assistance from the CDFI Fund under the CDFI Program within the 12-month period prior to the Federal Award Date of the FY 2023 BEA Program Award Agreement; (3) ever received assistance under the CDFI Program based on the same activities during the same period for which it is seeking a FY 2023 BEA Program Award; or (4) ever received assistance from another CDFI Fund program or federal program based on the same activities during the same period for which it is seeking a FY 2023 BEA Program Award.
Debarment/Do Not Pay Verification.	• The CDFI Fund will conduct a debarment check and will not consider an Application submitted by an Applicant (or Affiliate of an Applicant) if the Applicant is delinquent on any Federal debt. • The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government. The Do Not Pay Business Center provides delinquency information to the CDFI Fund to assist with the debarment check.

B. Prior Award Recipients: The previous success of an Applicant in any of the CDFI Fund's programs will not be considered under this NOFA. Prior BEA Program Award Recipients and prior Award Recipients of other CDFI Fund programs are eligible to apply under this NOFA, except as noted in the following table:

TABLE 3—ELIGIBILITY REQUIREMENTS FOR APPLICANTS WHICH ARE PRIOR AWARD RECIPIENTS

Criteria	Description
Pending resolution of Default or Noncompliance.	• If an Applicant (or Affiliate of an Applicant) that is a prior Award Recipient or Allocatee under any CDFI Fund program: (i) has demonstrated it is in noncompliance with or default of a previous assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance with or default of its previous agreement, the CDFI Fund will consider the Applicant's Application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance or default.
Default or Noncompliance status.	• The CDFI Fund will not consider an Application submitted by an Applicant (or Affiliate of such Applicant) that has a previously executed assistance agreement, award agreement, bond loan agreement, or agreement to guarantee or allocation agreement if, as of the date of the Application, (i) the CDFI Fund has made a determination that such entity is noncompliant with and or in default of such previously executed agreement, and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for or receive any future CDFI Fund awards or allocations. Such entities will be ineligible to submit an Application for such time period as specified by the CDFI Fund in writing.

C. Contact the CDFI Fund: Accordingly, Applicants that are prior Award Recipients and/or Allocatees under any CDFI Fund program are advised to comply with requirements specified in an assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee. All outstanding reports and compliance questions should be directed to the Certification, Compliance Monitoring and Evaluation helpdesk by submitting a BEA Compliance and Reporting AMIS Service Request or by telephone at (202) 653–0423. The CDFI Fund will respond to Applicants' reporting, compliance, or disbursement questions between the

[7] § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliated of such entities).

hours of 9 a.m. and 5 p.m. ET, starting on the date of the publication of this NOFA. The CDFI Fund will not respond to Applicants' reporting, compliance, or disbursement telephone calls or electronic inquiries received after 5 p.m. ET on May 30, 2023, until after the Application deadline. The CDFI Fund will respond to technical issues related to AMIS Accounts through 5 p.m. ET on June 1, 2023, via an IT AMIS Service Request, email at *AMIS@cdfi.treas.gov,* or by telephone at (202) 653–0422.

D. Cost sharing or matching fund requirements: Not applicable.

IV. Application and Submission Information

A. Address to Request an Application Package: Application materials can be found on *Grants.gov* and the CDFI Fund's website at *www.cdfifund.gov/bea.* Applicants may request a paper version of any Application material by contacting the CDFI Fund Help Desk at *cdfihelp@cdfi.treas.gov.*

B. Content and Form of Application Submission: All Application materials must be prepared using the English language and calculations must be made in U.S. dollars. Applicants must submit all materials described in and required by the Application by the applicable deadlines. Detailed Application content requirements, including instructions related to the submission of the Grant Application Package in *Grants.gov* and the FY 2023 BEA Program Application in AMIS, the CDFI Fund's web-based portal, are provided in detail in the Application Instructions. Once an Application is submitted, the Applicant will not be allowed to change any element of the Application. The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application.

C. Application Submission: The CDFI Fund has a two-step submission process for BEA Applications that requires the submission of required application information on two separate deadlines and in two separate and distinct systems, *Grants.gov* and the CDFI Fund's AMIS. The first step is the submission of the Grant Application, which consists solely of the Office of Management and Budget Standard Form—424 Mandatory (SF–424 Mandatory) *Application for Federal Assistance,* in *Grants.gov*. The second step is to submit an FY 2023 BEA Program Application in AMIS.

D. Grants.gov: Applicants must be registered with *Grants.gov* to submit the Grants Application Package. The Grants Application Package consists of one item, the SF–424 Mandatory. In order to register with *Grants.gov,* Applicants must have a UEI (Unique Entity Identifier) and have an active registration with *SAM.gov.* The CDFI Fund strongly encourages Applicants to start the *Grants.gov* registration process as soon as possible (refer to the following link: *https://www.grants.gov/web/grants/register.html*) as it may take several weeks to complete. Applicants that have previously registered with *Grants.gov* must verify that their registration is current and active. Applicants should contact *Grants.gov* directly with questions related to the registration or submission process as the CDFI Fund does not administer or maintain this system.

Applicants are required to submit a Grant Application Package in *Grants.gov* and have it validated by the *Grants.gov* submission deadline of May 2, 2023. The Grant Application Package is validated by *Grants.gov* after the Applicant's initial submission and it may take *Grants.gov* up to 48 hours to complete the validation process. Therefore, the CDFI Fund encourages Applicants to submit the Grant Application Package as early as possible. This will help to ensure that the Grant Application Package is validated before the *Grants.gov* submission deadline and provide time for Applicants to contact *Grants.gov* directly to resolve any submission issues since the CDFI Fund does not administer or maintain that system. For more information about *Grants.gov,* please visit *https://www.grants.gov* and see Table 8 for *Grants.gov* contact information.

The CDFI Fund electronically retrieves validated Grant Application Packages from *Grants.gov* and therefore only considers the submission of the Grant Application Package to be successful when it has been validated by *Grants.gov* before the submission deadline. It is the Applicant's sole responsibility to ensure that its Grant Application Package is submitted and validated by *Grants.gov* before the submission deadline. Applicants that do not successfully submit their Grant Application Package and have it validated by the *Grants.gov* submission deadline will not be able to submit a FY 2023 BEA Program Application in AMIS. The CDFI Fund will electronically retrieve validated Grant Application Packages from *Grants.gov* on a daily basis. Applicants are advised that it will take up to 48 hours from when the CDFI Fund retrieves the validated Grant Application Package for it to be available in AMIS to associate with a FY 2023 BEA Program Application.

Once the CDFI Fund has retrieved the validated Grant Application Package from *Grants.gov* and made it available in AMIS, Applicants must associate it with their Application. Applicants can begin working on their FY 2023 BEA Program Application in AMIS at any time, however, they will not be able to submit the Application until the validated Grant Application Package is associated, by the Applicant, with the Application.

Applicants are advised that the CDFI Fund will not notify them when the validated Grant Application Package has been retrieved from *Grants.gov* or when it is available in AMIS. It is the Applicant's responsibility to ensure that the validated SF–424 Mandatory is associated with its FY 2023 BEA Application in AMIS. Applicants will not be able to submit their FY 2023 BEA Program Application without completing this step.

Applicants are advised that the lookup function in the FY 2023 BEA Application in AMIS, uses the UEI reported on the validated Grant Application Package to match it with the correct AMIS Organization account. Therefore, Applicants must make sure the UEI included in the Grant Application Package submitted in *Grants.gov* matches the UEI in their AMIS Organization account. If, for example, the UEI does not match because the Applicant inadvertently used the UEI of their Bank Holding Company on the Grant Application Package in *Grants.gov* and is attempting to associate with AMIS Organization account of their FDIC-Insured Bank Subsidiary, the lookup function will not return any results and the Applicant will not be able to submit the FY 2023 BEA Application.

Applicants are also highly encouraged to provide EIN, Authorized Representative and/or Contact Person information on the Grant Application Package that matches the information included in AMIS Organization account.

E. Unique Entity Identifier: The Unique Entity Identifier (UEI) has replaced the Dun and Bradstreet Universal Numbering System (DUNS) number. The UEI, generated in the System for Award Management (*SAM.gov*), has become the official identifier for doing business with the federal government. This transition allows the federal government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the federal government. If an entity is registered in *SAM.gov* today, its UEI has already been assigned and is

viewable in *SAM.gov,* this includes inactive registrations. New registrants will be assigned a UEI as part of their SAM registration.

F. System for Award Management (SAM): An active SAM account is required to submit the required Grant Application Package in *Grants.gov.* Any entity applying for Federal grants or other forms of Federal financial assistance through *Grants.gov* must be registered in SAM in order to submit its Grant Application Package in *Grants.gov* or FY 2023 BEA Program Application in AMIS. When accessing *SAM.gov,* users will be asked to create a *login.gov* user account (if they don't already have one). Going forward, users will use their *login.gov* username and password every time when logging in to *SAM.gov.* Applicants must have established an active *SAM.gov* account no later than 30 days after the release of this NOFA. The SAM registration process can take four weeks or longer to complete so Applicants are strongly encouraged to begin the registration process upon release of this NOFA in order to avoid potential Application submission problems. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Applicants are advised to complete the *SAM.gov* process at least 48 hours in advance of the Grants Application Package deadline. Applicants are required to maintain a current and active SAM account at all times during which it has an active federal award or an application under consideration for an award by a federal awarding agency.

An original, signed notarized letter identifying the authorized entity administrator for the entity associated with the UEI is required by SAM and must be mailed to the Federal Service Desk.

This requirement is applicable to new entities registering in SAM or on existing registrations where there is no existing entity administrator. Existing entities with registered entity administrators do not need to submit an annual notarized letter. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Applicants are required to maintain a current and active SAM account at all times during which it has an active federal award or an application under consideration for an award by a federal awarding agency.

The CDFI Fund will not consider any Applicant that fails to properly register or activate its SAM account and, as a result, is unable to submit its Grant Application Package in *Grants.gov* or FY 2023 BEA Program Application in AMIS by the respective deadlines. Applicants must contact SAM directly with questions related to SAM registration or account changes as the CDFI Fund does not administer or maintain this system. For more information about SAM, please visit *https://www.sam.gov* or call 866–606–8220.

G. AMIS: All Applicants must complete an FY 2023 BEA Program Application in AMIS, the CDFI Fund's web-based portal. All Applicants must register User and Organization accounts in AMIS by May 2, 2023. In addition, all BEA transactions must be finalized in AMIS by May 30, 2023; this includes address/census tract verification. No transactions can be added, edited, or deleted after this deadline. Failure to register and complete a FY 2023 BEA Program Application in AMIS in accordance with the deadlines noted in Table 1: FY 2023 BEA Program Funding Round—Key Dates for Applicants will result in the CDFI Fund being unable to accept the Application. As AMIS is the CDFI Fund's primary means of communication with Applicants and Award Recipients, institutions must make sure that they update their contact information in their AMIS accounts. In addition, the Applicant should ensure that the institution information (name, EIN, UEI, Authorized Representative, contact information, etc.) on the Grant Application Package submitted as part of the Grant Application Package in *Grants.gov* matches the information in AMIS. EINs and UEIs in the Applicant's SAM account must match those listed in AMIS. For more information on AMIS, please see the information available through the AMIS Home page at *https://amis.cdfifund.gov.* Qualified Activity documentation and other attachments as specified in the applicable BEA Program Application must also be submitted electronically via AMIS. Detailed instructions regarding submission of Qualified Activity documentation is provided in the Application Instructions and AMIS Training Manual for the BEA Program Application. Applicants will not be allowed to submit missing Qualified Activity documentation after the BEA Transactions deadline and any Qualified Activity missing the required documentation will be disqualified. Qualified Activity documentation delivered by hard copy to the CDFI Fund's Washington, DC office address will be rejected, unless the Applicant previously requested a paper version of the Application as described in Section IV.A.

H. Submission Dates and Times: The following table provides the critical deadlines for the FY 2023 BEA Funding Round. Applications and any other required documents or attachments received after the applicable deadline will be rejected. The document submission deadlines stated in this NOFA and the Application are strictly enforced. The CDFI Fund will not grant exceptions or waivers for late submissions except where the submission delay was a direct result of a Federal government administrative or technological error.

TABLE 4—CRITICAL DEADLINES FOR FY 2023 BEA FUNDING ROUND

Description	Deadline	Time (eastern time)
Grant Application Package/SF–424 Mandatory *Submission Method: Electronically via Grants.gov.*	May 2, 2023 2023	11:59 p.m. ET.
FY 2023 BEA Program Application *Submission Method: Electronically via AMIS*	June 1, 2023 2023	5 p.m. ET.

1. Confirmation of Application Submission: Applicants may verify that their Grant Application Package was successfully submitted and validated in *Grants.gov* and that their FY 2023 BEA Program Application was successfully submitted in AMIS. Applicants should note that the Grant Application Package consists solely of the SF–424 Mandatory and has a different deadline than the FY 2023 BEA Program Application. These deadlines are provided above in Table 4: FY 2023 BEA Program Funding Round Critical Deadlines for Applicants. If the Grant Application Package is not successfully submitted and subsequently validated by *Grants.gov* by the deadline, the CDFI Fund will not review the FY 2023 BEA Program Application or any of the Application related material submitted in AMIS and the Application will be deemed ineligible.

a. Grants.gov Submission Information: In order to determine whether the Grant Application Package was submitted properly, each Applicant should: (1) receive two separate emails from *Grants.gov,* and (2) perform an independent step in *Grants.gov* to determine whether the Grant Application was validated. Each Applicant will receive the first email from *Grants.gov* immediately after the Grant Application Package is submitted confirming that the submission has entered the *Grants.gov* system. This email will contain a tracking number. Within 48 hours, the Applicant will receive a second email which will indicate if the submitted Grant Application Package was successfully validated or rejected with errors. However, Applicants should not rely on the second email notification from *Grants.gov* to confirm that the Grant Application Package was validated. Instead, Applicants should then perform an independent step in *Grants.gov* to determine if the Grant Application Package status shows as ''Validated'' by clicking on the ''Applicants'' menu, followed by clicking ''Track my Application,'' and then entering the tracking number provided in the first email. The Grant Application Package cannot be retrieved by the CDFI Fund until it has been validated by *Grants.gov*.

b. AMIS Submission Information: AMIS is the web-based portal where Applicants will directly enter their Application information and add supporting documentation, when applicable. The CDFI Fund strongly encourages the Applicant to allow sufficient time to confirm the Application content, review the material submitted, and remedy any issues prior to the BEA Transactions deadline. Only the Authorized Representative or an Application Point of Contact can submit the FY 2023 BEA Program Application in AMIS.

Applicants will not receive an email confirming that their FY 2023 BEA Program Application was successfully submitted in AMIS. Instead, Applicants should check their AMIS account to ensure that the status of the FY 2023 BEA Program Application shows ''Under Review.'' Step-by-step instructions for submitting an FY 2023 BEA Program Application in AMIS are provided in the Application Instructions, Supplemental Guidance, and AMIS Training Manual for the BEA Program Electronic Application.

2. Multiple Application Submissions: If an Applicant submits multiple versions of its Grant Application Package in *Grants.gov,* the Applicant can only associate one with its FY 2023 BEA Program Application in AMIS.

Applicants can only submit one FY 2023 BEA Program Application in AMIS. Upon submission, the Application will be locked and cannot be resubmitted, edited, or modified in any way. The CDFI Fund will not unlock a submitted Application or allow multiple Application submissions.

3. Late Submission: The CDFI Fund will not accept an SF–424 Mandatory in *Grants.gov* or an FY 2023 BEA Program Application in AMIS if it is not signed by an Authorized Representative or submitted after the respective deadlines. In either case, the CDFI Fund will not review any material submitted, and the Application will be deemed ineligible, except where the submission delay was a direct result of a Federal government administrative or technological error. This exception includes any errors associated with *Grants.gov, SAM.gov,* AMIS or any other applicable government system. In such case, the Applicant must submit their request for acceptance of a late Application submission to the BEA Program Office via an AMIS Service Request with documentation that clearly demonstrates the error by no later than two business days after the applicable Application deadline for *Grants.gov* or AMIS. The CDFI Fund will not respond to a request for acceptance of late Application submissions after that time period. The AMIS Service Request must be directed to the BEA Program with a subject line of ''FY 2023 BEA Late Application Submission Request.''

I. Funding Restrictions: BEA Program Awards are limited by the following:

1. The Award Recipient shall use BEA Program Award funds only for the eligible activities described in Section II. D. of this NOFA and the Authorized BEA Program Activities described in its Award Agreement.

2. The Award Recipient may not distribute BEA Program Award funds to an Affiliate, Subsidiary, or any other entity, without the CDFI Fund's prior written approval.

3. BEA Program Award funds shall only be disbursed to the Award Recipient.

4. The CDFI Fund, in its sole discretion, may disburse BEA Program Award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

J. Other Submission Requirements: None.

V. Application Review Information

A. Criteria: If the Applicant submitted a complete and eligible Application, the CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, the Application guidance, and the Uniform Requirements. The CDFI Fund reserves the right to contact the Applicant by telephone, email, or mail for the sole purpose of clarifying or confirming Application information. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or run the risk that its Application will be rejected.

The CDFI Fund will not collect or accept any Personally Identifiable Information (PII) in AMIS or in any of the Application submission materials. PII is information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Although Applicants are required to enter addresses of individual borrowers/residents of Distressed Communities in AMIS, Applicants must not include the following PII for the individuals who received the financial products or services in AMIS or in the supporting documentation: name of the individual, Social Security Number, driver's license or state identification number, passport number, and Alien Registration Number. This information should be redacted from all supporting documentation. If the CDFI Fund discovers PII during the review of an Application, the transaction will be deleted from the application record and deemed ineligible.

1. CDFI Related Activities: CDFI Related Activities include Equity Investments, Equity-Like Loans, and CDFI Support Activities provided to eligible CDFI Partners.

2. Eligible CDFI Partner: CDFI Partner is defined as a Certified CDFI that has been provided assistance in the form of CDFI Related Activities by an unaffiliated Applicant (12 CFR 1806.103). For the purposes of this NOFA, an eligible CDFI Partner must have been certified as a CDFI as of the date that the BEA Applicant made its investment or provided support, and be Integrally Involved in a Distressed Community (if the BEA Applicant provided CDFI Support Activities to the CDFI Partner).

3. Integrally Involved: Integrally Involved is defined at 12 CFR 1806.103. For purposes of this NOFA, in order for an Applicant to report CDFI Support Activities in its Application, the CDFI Partner which received the support must be deemed to be Integrally Involved by demonstrating it has: (i) provided at least 10 percent of the

number of its financial transactions or dollars transacted (*e.g.,* loans or Equity Investments), or 10 percent of the number of its Development Service Activities (as defined in 12 CFR 1805.104) or value of the administrative cost of providing such services, in one or more Distressed Communities identified by the CDFI Partner, in each of the three calendar years preceding the date of this NOFA; (ii) transacted at least 25 percent of the number of its financial transactions or dollars transacted (*e.g.,* loans or equity investments) in one or more Distressed Communities in at least one of the three calendar years preceding the date of this NOFA, or 25 percent of the number of its Development Service Activities (as defined in 12 CFR 1805.104) or value of the administrative cost of providing such services, in one or more Distressed Communities identified by the CDFI Partner, in at least one of the three calendar years preceding the date of this NOFA; (iii) demonstrated that it has attained at least 10 percent of market share for a particular financial product in one or more Distressed Communities (such as home mortgages originated in one or more Distressed Communities) in at least one of the three calendar years preceding the date of this NOFA; or (iv) at least 25 percent of the CDFI Partner's physical locations (*e.g.,* offices or branches) are located in one or more Distressed Communities where it provided financial transactions or Development Service Activities during the one calendar year preceding the date of the NOFA.

4. Limitations on eligible Qualified Activities provided to certain CDFI Partners: A CDFI Applicant cannot receive credit for any financial assistance or Qualified Activities provided to a CDFI Partner that is also an FDIC-insured depository institution or depository institution holding company.

5. Certificates of Deposit: Any certificate of deposit (CD) placed by an Applicant or its Subsidiary in a CDFI Partner that is a bank, thrift, or credit union must be: (i) uninsured and committed for at least three years; or (ii) insured, committed for a term of at least three years, and provided at an interest rate that is materially below market rates, in the determination of the CDFI Fund.

a. For purposes of this NOFA, ''materially below market interest rate'' is defined as an annual percentage rate that does not exceed the yields on Treasury securities at constant maturity as interpolated by Treasury from the daily yield curve and available on the Treasury website at *www.treas.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml.* For example, for a three-year CD, Applicants should use the three-year rate U.S. Government securities, Treasury Yield Curve Rate posted for that business day. The Treasury updates the website daily at approximately 5:30 p.m. ET. CDs placed prior to that time may use the rate posted for the previous business day. The annual percentage rate on a CD should be compounded daily, quarterly, semi-annually, or annually. If a variable interest rate is used, the CD must also have an interest rate that is materially below the market interest rate over the life of the CD, in the determination of the CDFI Fund. If a variable rate is used, the Applicant must describe its methodology for determining that the interest rate over the life of the CD is a materially below market interest rate. The CDFI Fund reserves the right to follow up with an Applicant regarding variable interest rate CD transactions.

b. For purposes of this NOFA, a deposit placed by an Applicant directly with a CDFI Partner that participates in a deposit network or service may be treated as eligible under this NOFA if it otherwise meets the criteria for deposits specified in this NOFA and the CDFI Partner retains the full amount of the initial deposit or an amount equivalent to the full amount of the initial deposit through a deposit network exchange transaction.

6. Equity Investment: An Equity Investment means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in this NOFA, in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the CDFI Fund.

7. Equity-Like Loan: An Equity-Like Loan is a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment, as such characteristics may be specified by the CDFI Fund (12 CFR 1806.103). For purposes of this NOFA, an Equity-Like Loan must meet the following characteristics:

a. At the end of the initial term, the loan must have a definite rolling maturity date that is automatically extended on an annual basis if the CDFI borrower continues to be financially sound and carry out a community development mission;

b. Periodic payments of interest and/or principal may only be made out of the CDFI borrower's available cash flow after satisfying all other obligations;

c. Failure to pay principal or interest (except at maturity) will not automatically result in a default of the loan agreement; and

d. The loan must be subordinated to all other debt except for other Equity-Like Loans. Notwithstanding the foregoing, the CDFI Fund reserves the right to determine, in its sole discretion and on a case-by-case basis, whether an instrument meets the above-stated characteristics of an Equity-Like Loan.

8. CDFI Support Activity: A CDFI Support Activity is defined as assistance provided by an Applicant or its Subsidiary to a CDFI that is Integrally Involved in a Distressed Community, in the form of a loan, Technical Assistance, or deposits.

9. CDFI Program Matching Funds: Equity Investments, Equity-Like Loans, and CDFI Support Activities (except Technical Assistance) provided by a BEA Applicant to a CDFI and used by the CDFI for matching funds under the CDFI Program are eligible as a Qualified Activity under the CDFI Related Activity category.

10. Commercial Loans and Investments: Commercial Loans and Investments is a sub-category of Distressed Community Financing Activities and is defined as the following lending activity types: Affordable Housing Development Loans and related Project Investments; Commercial Real Estate Loans and related Project Investments; and Small Business Loans and related Project Investments.

11. Consumer Loans: Consumer Loans is a sub-category of Distressed Community Financing Activities and is defined as the following lending activity types: Affordable Housing Loans; Education Loans; Home Improvement Loans; and Small Dollar Consumer Loans.

12. Distressed Community Financing Activities and Service Activities: Distressed Community Financing Activities comply with consumer protection laws and are defined as (1) Consumer Loans; or (2) Commercial Loans and Investments. In addition to the requirements set forth in the Interim Rule, this NOFA provides the following additional requirements:

a. Affordable Housing Development Loans and Related Project Investments: For purposes of this NOFA, eligible Affordable Housing Development Loans and related Project Investments do not include housing for students, or school dormitories. In addition, for such transactions, Applicants will be required to provide supporting

documentation that demonstrates that at least 60 percent of the units in the property financed are or will be sold or rented to Eligible Residents who meet Low-and-Moderate-Income requirements, as noted in the Application instructions.

b. Commercial Real Estate Loans and related Project Investments: For purposes of this NOFA, eligible Commercial Real Estate Loans (12 CFR 1806.103) and related Project Investments are generally limited to transactions with a total principal value of $10 million or less. Notwithstanding the foregoing, the CDFI Fund, in its sole discretion, may consider transactions with a total principal value of over $10 million, subject to review. For such transactions, Applicants must provide a separate narrative, or other information, to demonstrate that the proposed project offers, or significantly enhances the quality of, a facility or service not currently provided to the Distressed Community.

c. Small Dollar Consumer Loan: For purposes of this NOFA, eligible Small Dollar Consumer Loans are responsible and affordable loans that serve as available alternatives to the marketplace for individuals who are Eligible Residents with a total principal value of no less than $500 and no greater than $5,000 and have a term of ninety (90) days or more. A responsible Small Dollar Loan generally considers the borrower's ability to repay and may also reflect repayment terms, pricing, and safeguards that minimize adverse customer outcomes, including cycles of debt due to rollovers or reborrowing.

d. Distressed Community Financing Activities—Transactions Less Than $250,000: For purposes of this NOFA, Applicants are expected to maintain records for any transaction submitted as part of the FY 2023 BEA Program Application, including supporting documentation for transactions in the Distressed Community Financing Activity category of less than $250,000. The CDFI Fund reserves the right to request supporting documentation from an Applicant during its Application Review process for a Distressed Community Financing Activities transaction less than $250,000.

e. Low- and Moderate-Income residents: For the purposes of this NOFA, Low-Income means borrower income that does not exceed 80 percent of the area median income, and Moderate-Income means borrower income may be 81 percent to no more than 120 percent of the area median income, according to the U.S. Census Bureau data.

13. Reporting Certain Financial Services: The CDFI Fund will value the administrative cost of providing certain Financial Services using the following per unit values:

a. $100.00 per account for Targeted Financial Services including safe transaction accounts, youth transaction accounts, Electronic Transfer Accounts and Individual Development Accounts;

b. $50.00 per account for checking and savings accounts that do not meet the definition of Targeted Financial Services;

c. $5.00 per check cashing transaction;

d. $50,000 per new ATM installed at a location in a Distressed Community;

e. $500,000 per new retail bank branch office opened in a Distressed Community, including school-based bank branches approved by the Applicant's Federal bank regulator;

f. In the case of Applicants engaging in Financial Services activities not described above, the CDFI Fund will determine the unit value of such services;

g. When reporting the opening of a new retail bank branch office, the Applicant must certify that such new branch is intended to remain in operation for at least the next five years;

h. Financial Service Activities must be provided by the Applicant to Eligible Residents or enterprises that are located in a Distressed Community. An Applicant may determine the number of Eligible Residents who are Award Recipients of Financial Services by either: (i) collecting the addresses of its Financial Services customers, or (ii) certifying that the Applicant reasonably believes that such customers are Eligible Residents or enterprises located in a Distressed Community and providing a brief analytical narrative with information describing how the Applicant made this determination. Citations must be provided for external sources. In addition, if external sources are referenced in the narrative, the Applicant must explain how it reached the conclusion that the cited references are directly related to the Eligible Residents or enterprises to whom it is claiming to have provided the Financial Services; and

i. When reporting changes in the dollar amount of deposit accounts, only calculate the net change in the total dollar amount of eligible Deposit Liabilities between the Baseline Period and the Assessment Period. Do not report each individual deposit. If the net change between the Baseline Period and Assessment Period is a negative dollar amount, then a negative dollar amount may be recorded for Deposit Liabilities only. Instructions for determining the net change is available in the FY 2023 BEA Program Application in AMIS.

14. Priority Factors: Priority Factors are the numeric values assigned to individual types of activity within: (i) the Distressed Community Financing Activities, and (ii) Services Activities categories of Qualified Activities. For the purposes of this NOFA, Priority Factors will be based on the Applicant's asset size as of the end of the Assessment Period (December 31, 2022) as reported by the Applicant in the Application. Asset size classes (*i.e.,* small institutions, intermediate-small institutions, and large institutions) will correspond to the Community Reinvestment Act (CRA) asset size classes set by the three Federal bank regulatory agencies and that were effective as of the end of the Assessment Period. The Priority Factor works by multiplying the change in a Qualified Activity by the assigned Priority Factor to achieve a ''weighted value.'' This weighted value of the change would be multiplied by the applicable Award percentage to yield the Award amount for that particular activity. For purposes of this NOFA, the CDFI Fund is establishing Priority Factors based on Applicant asset size to be applied to all activity types within the Distressed Community Financing Activities and Service Activities categories only, as follows:

TABLE 5—CRA ASSET SIZE CLASSIFICATION

	Priority factor
Small institutions (assets of less than $376 million as of 12/31/2022)	5.0
Intermediate—small institutions (assets of at least $376 million but less than $1.503 billion as of 12/31/2022)	3.0
Large institutions (assets of $1.503 billion or greater as of 12/31/2022)	1.0

15. *Certain Limitations on Qualified Activities:*

a. Low-Income Housing Tax Credits: Financial assistance provided by an Applicant for which the Applicant receives benefits through Low-Income Housing Tax Credits, authorized pursuant to Section 42 of the Internal Revenue Code, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a BEA Program Award.

b. New Markets Tax Credits: Financial assistance provided by an Applicant for which the Applicant receives benefits as an investor in a Community Development Entity that has received an allocation of New Markets Tax Credits, authorized pursuant to Section 45D of the Internal Revenue Code, as amended (26 U.S.C. 45D), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a BEA Program Award. Leverage loans used in New Markets Tax Credit structured transactions that meet the requirements outlined in this NOFA are considered Distressed Community Financing Activities. The Application materials will provide further guidance on requirements for BEA transactions which were leverage loans used in a New Markets Tax Credit structured transaction.

c. Loan Renewals and Refinances: Financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of calculating or receiving a BEA Program Award if such financial assistance consists of a loan to a borrower that has matured and is then renewed by the Applicant, or consists of a loan to a borrower that is retired or restructured using the proceeds of a new commitment by the Applicant.

d. Certain Business Types: Financial assistance provided by an Applicant shall not constitute a Qualified Activity for the purposes of financing the following business types: adult entertainment providers, golf courses, race tracks, gambling facilities, country clubs, facilities offering massage services, hot tub facilities, suntan facilities, or stores where the principal business is the sale of alcoholic beverages for consumption off premises.

e. Prior BEA Program Awards: Qualified Activities funded with prior funding round BEA Program Award dollars or funded to satisfy requirements of the BEA Program Award Agreement shall not constitute a Qualified Activity for the purposes of calculating or receiving a BEA Program Award.

f. Prior CDFI Fund Awards: No Applicant may receive a BEA Program Award for the same activities funded by another CDFI Fund program or federal program.

16. Award Percentages, Award Amounts, Application Review Process, Selection Process, Programmatic and Financial Risk, and Application Rejection: The Interim Rule and this NOFA describe the process for selecting Applicants to receive a BEA Program Award and determining Award amounts.

a. Award percentages: In the CDFI Related Activities subcategory of CDFI Equity, for all Applicants, the estimated award amount will be equal to 18 percent of the increase in Qualified Activities reported in this subcategory.

In the CDFI Related Activities subcategory of CDFI Support Activities, for a Certified CDFI Applicant, the estimated award amount will be equal to 18 percent of the increase in Qualified Activities in this subcategory. If an Applicant is not a Certified CDFI, the estimated award amount will be equal to 6 percent of the increase in Qualified Activities in this subcategory.

In the Distressed Community Financing Activities subcategory of Consumer Lending, the estimated award amount for Certified CDFI Applicants will be 18 percent of the weighted value of the increase in Qualified Activities in this subcategory. If an Applicant is not a Certified CDFI Applicant, the estimated award amount will be equal to 6 percent of the weighted value of the increase in Qualified Activities in this subcategory.

In the Distressed Community Financing Activities subcategory of Commercial Lending and Investments, for a Certified CDFI Applicant, the estimated award amount will be equal to 9 percent of the weighted value of the increase in Qualified Activities in this subcategory. If an Applicant is not a Certified CDFI, the estimated award amount will be equal to 3 percent of the weighted value of the increase in Qualified Activity in this subcategory.

In the Service Activities category, for a Certified CDFI Applicant, the estimated award amount will be equal to 9 percent of the weighted value of the increase in Qualified Activity for the category. If an Applicant is not a Certified CDFI, the estimated award amount will be equal to 3 percent of the weighted value of the increase in Qualified Activity for the category.

b. Award Amounts: An Applicant's estimated award amount will be calculated according to the procedure outlined in the Interim Rule (at 12 CFR 1806.403). As outlined in the Interim Rule at 12 CFR 1806.404, the CDFI Fund will determine actual award amounts based on the availability of funds, increases in Qualified Activities from the Baseline Period to the Assessment Period, and the priority ranking of each Applicant.

In calculating the increase in Qualified Activities, the CDFI Fund will determine the eligibility of each transaction for which an Applicant has applied for a BEA Program Award. In some cases, the actual award amount calculated by the CDFI Fund may not be the same as the estimated award amount requested by the Applicant.

For purposes of calculating award payment amounts, the CDFI Fund will treat Qualified Activities with a total principal amount less than or equal to $250,000 as fully disbursed.

B. Review and Selection Process:

1. Application Review Process: All Applications will be initially evaluated by external non-federal reviewers. Reviewers are selected based on their experience in understanding various financial transactions, reading and interpreting financial documentation, strong written communication skills, and strong mathematical skills. Reviewers must complete the CDFI Fund's conflict of interest process and be approved by the CDFI Fund.

2. Selection Process: If the amount of funds available during the funding round is insufficient for all estimated Award amounts, Award Recipients will be selected based on the process described in the Interim Rule at 12 CFR 1806.404. This process gives funding priority to Applicants that undertake activities in the following order: (i) CDFI Related Activities, (ii) Distressed Community Financing Activities, and (iii) Service Activities, as described in the Interim Rule at 12 CFR 1806.404(c).

Within each category, CDFI Applicants will be ranked first according to the ratio of the actual award amount calculated by the CDFI Fund for the category to the total assets of the Applicant, followed by Applicants that are not CDFI Applicants according to the ratio of the actual award amount calculated by the CDFI Fund for the category to the total assets of the Applicant.

Selections within each priority category will be based on the Applicants' relative rankings within each such category, subject to the availability of funds and any established maximum dollar amount of total awards that may be awarded for the Distressed Community Financing Activities category of Qualified Activities, as determined by the CDFI Fund.

The CDFI Fund, in its sole discretion: (i) may adjust the estimated award amount that an Applicant may receive; (ii) may establish a maximum amount that may be awarded to an Applicant; and (iii) reserves the right to limit the amount of an award to any Applicant if the CDFI Fund deems it appropriate.

The CDFI Fund reserves the right to contact the Applicant to confirm or clarify information. If contacted, the Applicant must respond within the CDFI Fund's time parameters or the Application may be rejected.

The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures. If those changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information regarding the changes through the CDFI Fund's website.

3. Programmatic and Financial Risk: The CDFI Fund will consider safety and soundness information from the appropriate Federal bank regulatory agency as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)). If the appropriate Federal bank regulatory agency identifies safety and soundness concerns, the CDFI Fund will assess whether the concerns cause or will cause the Applicant to be incapable of completing the activities for which funding has been requested. The CDFI Fund will not approve a BEA Program Award under any circumstances for an Applicant if the appropriate Federal bank regulatory agency indicates that the Applicant received a composite rating of ''5'' on its most recent examination, performed in accordance with the Uniform Financial Institutions Rating System.

Furthermore, the CDFI Fund will not approve a BEA Program Award for an Applicant that has:

(i) a CRA assessment rating of below ''Satisfactory'' on its most recent examination; (ii) a financial audit with: a going concern paragraph, an adverse opinion, a disclaimer of opinion, or a withdrawal of an opinion on its most recent audit; or (iii) a Prompt Corrective Action directive from its regulator imposing restrictions on its level of lending activities, that was active at the time the Applicant submitted its Application to the CDFI Fund or becomes active during the CDFI Fund's evaluation of the Application for: activities which funding has been requested, activities which meet the BEA Program criteria of Qualified Activities, or other circumstances which may impact an Applicant's ability to successfully manage, re-invest, and/or report on a FY 2023 BEA Program Award.

Applicants and/or their appropriate Federal bank regulator agency may be contacted by the CDFI Fund to provide additional information related to Federal bank regulatory or CRA information. The CDFI Fund will consider this information and may choose to not approve a FY 2023 BEA Program Award for an Applicant if the information indicates that the Applicant may be unable to responsibly manage, re-invest, and/or report on a FY 2023 BEA Program Award during the period of performance.

4. Persistent Poverty Counties: Should the CDFI Fund determine, upon analysis of the initial pool of BEA Program Award Recipients, that it has not achieved the 10 percent PPC requirement mandated by Congress, Award preference will be given to Applicants that committed to deploying a minimum of 10 percent of their FY 2023 BEA Program Award in PPCs. Applicants may be required to deploy more than the minimum commitment percentage, but the percentage required should not exceed the maximum commitment percentage provided in the Application. Applicants that committed to serving PPCs and are selected to receive a FY 2023 BEA Program award, will have their PPC commitment incorporated into their Award Agreement as a Performance Goal which will be subject to compliance and reporting requirements. No Applicant, however, will be disqualified from consideration for not making a PPC commitment in its BEA Program Application.

5. Application Rejection: The CDFI Fund reserves the right to reject an Application if information (including administrative error) comes to the CDFI Fund's attention that either: adversely affects an Applicant's eligibility for an award; adversely affects the CDFI Fund's evaluation or scoring of an Application; or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application.

There is no right to appeal the CDFI Fund's award decisions. The CDFI Fund's award decisions are final. The CDFI Fund will not discuss the specifics of an Applicant's FY 2023 BEA Program Application or provide reasons why an Applicant was not selected to receive a FY 2023 BEA Program Award. The CDFI Fund will only respond to general questions regarding the FY 2023 BEA Program Application and award decision process until 30 days after the award announcement date.

C. Anticipated Announcement and Federal Award Dates: The CDFI Fund anticipates making its FY 2023 BEA Program award announcement in the summer of 2023. The Federal Award Date shall be the date that the CDFI Fund executes the Award Agreement.

VI. Federal Award Administration Information

A. Federal Award Notices: The CDFI Fund will notify an Applicant of its selection as an Award Recipient by delivering a notification or letter. The Award Agreement will contain the general terms and conditions governing the CDFI Fund's provision of an Award. The Award Recipient will receive a copy of the Award Agreement via AMIS. The Award Recipient is required to sign the Award Agreement via an electronic signature in AMIS. The CDFI Fund will subsequently execute the Award Agreement. Each Award Recipient must also ensure that complete and accurate banking information is reflected in its SAM account at *www.sam.gov* in order to receive its award payment.

B. Administrative and National Policy Requirements: If, prior to entering into an Award Agreement, information (including an administrative error) comes to the CDFI Fund's attention that adversely affects: the Award Recipient's eligibility for an award; the CDFI Fund's evaluation of the Application; the Award Recipient's compliance with any requirement listed in the Uniform Requirements; or indicates fraud or mismanagement on the Award Recipient's part, the CDFI Fund may, in its discretion and without advance notice to the Award Recipient, terminate the award or take other actions as it deems appropriate.

If the Award Recipient's certification status as a CDFI changes, the CDFI Fund reserves the right, in its sole discretion, to re-calculate the award, and modify the Award Agreement based on the Award Recipient's non-CDFI status.

By executing an Award Agreement, the Award Recipient agrees that, if the CDFI Fund becomes aware of any information (including an administrative error) prior to the effective date of the Award Agreement that either adversely affects the Award Recipient's eligibility for an award, or

adversely affects the CDFI Fund's evaluation of the Award Recipient's Application, or indicates fraud or mismanagement on the part of the Award Recipient, the CDFI Fund may, in its discretion and without advance notice to the Award Recipient, terminate the Award Agreement or take other actions as it deems appropriate.

The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Award Recipient fails to return the Award Agreement, signed by the authorized representative of the Award Recipient, and/or provide the CDFI Fund with any other requested documentation, within the CDFI Fund's deadlines.

In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Award Agreement and the award made under this NOFA for any criteria described in the following table:

TABLE 6—CRITERIA THAT MAY RESULT IN AWARD TERMINATION PRIOR TO THE EXECUTION OF AN AWARD AGREEMENT

Criteria	Description
Failure to maintain FDIC-insured status	• If prior to entering into an Award Agreement under this NOFA, the Award Recipient does not maintain its FDIC-insured status, the CDFI Fund will terminate and/or rescind the Award Agreement and the award made under this NOFA.
Failure to meet reporting requirements	• If an Applicant is a prior CDFI Fund Award Recipient or Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds, until said prior Award Recipient or Allocatee is current on the reporting requirements in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee. Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete and therefore met reporting requirements. If said prior Award Recipient or Allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award made under this NOFA.
Pending resolution of Default or Noncompliance	• If, at any time prior to entering into an Award Agreement under this NOFA, an Applicant (or Affiliate of an Applicant) that is a prior CDFI Fund Award Recipient or Allocatee under any CDFI Fund program: (i) has demonstrated it has been in noncompliance with or in default of a previous assistance, award, allocation agreement, bond loan agreement, or agreement to guarantee, but (ii) the CDFI Fund has yet to make a final determination regarding whether or not the entity is in noncompliance with or in default of its previous assistance, award, allocation, bond loan agreement, or agreement to guarantee, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a payment of award proceeds, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance or default. • If said prior Award Recipient or Allocatee is unable to meet this requirement, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award made under this NOFA.
Default or Noncompliance status	• If prior to entering into an Award Agreement under this NOFA: (i) the CDFI Fund has made a final determination that an Applicant (or an Affiliate of an Applicant) that is a prior CDFI Fund Award Recipient or Allocatee under any CDFI Fund program whose award or allocation terminated in default or noncompliance of such prior agreement; (ii) the CDFI Fund has provided written notification of such determination to such organization; and (iii) the anticipated date for entering into the Award Agreement under this NOFA is within a period of time specified in such notification throughout which any new award, allocation, assistance, bond loan agreement(s), or agreement to guarantee is prohibited, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Award Agreement and the award made under this NOFA.
Compliance with Federal civil rights requirements.	• If, within the period starting three years prior to this NOFA and through the date of the Award Agreement, the Recipient received a final determination, in any proceeding instituted against the Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the Recipient violated any federal civil rights laws or regulations, including: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d *et seq.*); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), the CDFI Fund may terminate and rescind the Award Agreement and the Award made under this NOFA.
Do Not Pay	• The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government. • The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Award Recipient (or Affiliate of a Recipient) is identified as ineligible to be an Award Recipient per the Do Not Pay database.
Safety and Soundness	• If it is determined the Award Recipient is or will be incapable of meeting its award obligations, the CDFI Fund will deem the Award Recipient to be ineligible or require it to improve safety and soundness conditions prior to entering into an Award Agreement.

C. Award Agreement: After the CDFI Fund selects an Award Recipient, unless an exception detailed in this NOFA applies, the CDFI Fund and the Award Recipient will enter into an Award Agreement. The Award

Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) the amount of the award; (ii) the approved uses of the award; (iii) the Performance Goals and measures; (iv) the period of performance; and (v) the reporting requirements. The Award Agreement shall provide that an Award Recipient shall: (i) carry out its Qualified Activities in accordance with applicable law, the approved Application, and all other applicable requirements; (ii) not receive any disbursement of award dollars until the CDFI Fund has determined that the Award Recipient has fulfilled all applicable requirements; and (iii) use the BEA Program Award amount for Qualified Activities. Award Recipients which committed to serving PPCs will have their PPC commitment incorporated into their Award Agreement as a Performance Goal, which will be subject to compliance and reporting requirements.

D. Reporting: Through this NOFA, the CDFI Fund will require each Award Recipient to account for and report to the CDFI Fund on the use of the award. This will require Award Recipients to establish administrative controls, subject to applicable OMB Circulars. The CDFI Fund will collect information from each such Award Recipient on its use of the award at least once following the award and more often if deemed appropriate by the CDFI Fund in its sole discretion. The CDFI Fund will provide guidance to Award Recipients outlining the format and content of the information required to be provided to describe how the funds were used.

The CDFI Fund may collect information from each Award Recipient including, but not limited to, an Annual Report with the following components:

TABLE 7—REPORTING REQUIREMENTS

Criteria	Description
Use of BEA Program Award Report—for all Award Recipients.	Award Recipients must submit the Use of Award Report to the CDFI Fund via AMIS.
Use of BEA Program Award Report—Funds Deployed in Persistent Poverty Counties—as applicable.	The CDFI Fund will require each Award Recipient with Persistent Poverty County commitments to report data for Award funds deployed in persistent poverty counties and maintain proper supporting documentation and records which are subject to review by the CDFI Fund.
Explanation of Noncompliance or successor report—as applicable.	If the Award Recipient fails to meet a Performance Goal or reporting requirement, it must submit the Explanation of Noncompliance via AMIS.

Each Award Recipient is responsible for the timely and complete submission of the reporting requirements. The CDFI Fund reserves the right to contact the Award Recipient to request additional information and documentation. The CDFI Fund may consider financial information filed with Federal regulators during its compliance review. The CDFI Fund will use such information to monitor each Award Recipient's compliance with the requirements in the Award Agreement and to assess the impact of the BEA Program. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice has been provided to Award Recipients.

E. Financial Management and Accounting: The CDFI Fund will require Award Recipients to maintain financial management and accounting systems that comply with federal statutes, regulations, and the terms and conditions of the award. These systems must be sufficient to permit the preparation of reports required by general and program specific terms and conditions, including the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the federal statutes, regulations, and the terms and conditions of the award.

Each of the Qualified Activities categories will be ineligible for indirect costs and an associated indirect cost rate. The cost principles used by Award Recipients must be consistent with Federal cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the BEA Program Award. In addition, the CDFI Fund will require Award Recipients to: maintain effective internal controls; comply with applicable statutes, regulations, and the Award Agreement; evaluate and monitor compliance; take action when not in compliance; and safeguard personally identifiable information, as described in Section V.A. of this NOFA.

VII. Federal Awarding Agency Contacts

A. Questions Related to Application and Prior Award Recipient Reporting, Compliance and Disbursements: The CDFI Fund will respond to questions concerning this NOFA, the Application and reporting, compliance, or disbursements between the hours of 9 a.m. and 5 p.m. Eastern Time, starting on the date that this NOFA is published through the date listed in Table 1. The CDFI Fund will post responses to frequently asked questions in a separate document on its website. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *https://www.cdfifund.gov.*

The following table lists contact information for the CDFI Fund, *Grants.gov* and SAM:

TABLE 8—CONTACT INFORMATION

Type of question	Telephone No. (not toll free)	Electronic contact method
BEA Program	(202) 653–0421	BEA AMIS Service Request.
Certification, Compliance Monitoring, and Evaluation	(202) 653–0423	BEA Compliance and Reporting AMIS Service Request.
AMIS—IT Help Desk	(202) 653–0422	IT AMIS Service Request.
Grants.gov Help Desk	(800) 518–4726	*support@grants.gov.*
SAM.gov (Federal Service Desk)	(866) 606–8220	Web form via *https://www.fsd.gov/fsd-gov/login.do.*

B. Information Technology Support: People who have visual or mobility impairments that prevent them from using the CDFI Fund's website should call (202) 653–0422 for assistance (this is not a toll free number).

C. Communication with the CDFI Fund: The CDFI Fund will use its AMIS internet interface to communicate with Applicants and Award Recipients under this NOFA. Award Recipients must use AMIS to submit required reports. The CDFI Fund will notify Award Recipients by email using the addresses maintained in each Award Recipient's AMIS account. Therefore, an Award Recipient and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in their AMIS account(s).

D. Civil Rights and Equal Opportunity: Any person who is eligible to receive benefits or services from the CDFI Fund or its Recipients under any of its programs is entitled to those benefits or services without being subjected to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Equal Employment Opportunity enforces various federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that they have been subjected to discrimination because of their race, color, national origin, age, sex, disability and/or reprisal, they may file a complaint with: Director, Office of Civil Rights and Equal Employment Opportunity, 1500 Pennsylvania Ave. NW, Washington, DC 20220 or by email at *crcomplaints@treasury.gov.*

VIII. Other Information

A. Reasonable Accommodations: Requests for reasonable accommodations under section 504 of the Rehabilitation Act should be directed to Mr. Jay Santiago, Community Development Financial Institutions Fund, U.S. Department of the Treasury, at *SantiagoJ@cdfi.treas.gov* no later than 72 hours in advance of the application deadline.

B. Paperwork Reduction Act: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the BEA Program funding Application has been assigned the following control number: 1559–0005.

C. Application Information Sessions: The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, please visit the CDFI Fund's website at *https://www.cdfifund.gov.*

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2023–06827 Filed 3–31–23; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8908

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8908, Energy Efficient Home Credit.

DATES: Written comments should be received on or before June 2, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Please include, ''OMB Number: 1545–1979, Form 8908—Energy Efficient Home Credit'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Energy Efficient Home Credit.

OMB Number: 1545–1979.

Form Number: Form 8908.

Abstract: The IRS created Form 8908 to reflect new code section 45L which allows qualified contractors to claim a credit for each qualified energy-efficient home sold. Eligible contractors use Form 8908 to claim a credit for each qualified energy efficient home sold or leased to another person during the tax year for use as a residence. The credit is based on the energy saving requirements of the home. The credit is part of the general business credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 1,980.

Estimated Time per Respondent: 2.59 minutes.

Estimated Total Annual Burden Hours: 5,128.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 29, 2023.

Molly J. Stasko,

Senior Tax Analyst.

[FR Doc. 2023–06821 Filed 3–31–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: Department of Veterans Affairs (VA) Network of Support Pilot Survey #2

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 2, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger.@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Executive Order 13571—Streamlining Service Delivery and Improving Customer Service.

Title: Department of Veterans Affairs (VA) Network of Support Pilot Survey #2 (DEC2023).

OMB Control Number: 2900–NEW.

Type of Review: New Collection.

Abstract: The Network of Support Pilot Survey #2 will be administered by VA to participants of the NoS Pilot to assess their satisfaction with the Program and their perception of its utility. The NoS Pilot is a legislatively mandated Pilot Program that invites transitioning service members (TSMs) to opt-in to the Program and then nominate up to 10 close friends and family members to received regular VA-provided information on Veteran benefits and resources. While the legislation focuses on TSMs, separated Veterans may also choose to participate in the Pilot. The intent is to increase the likelihood that new Veterans will see, understand, and take advantage of their earned benefits, thereby easing what can be a difficult transition out of the military. This information collection request (ICR) will be the second of two surveys in the two-year pilot program—the first being NoS Survey #1 (ICR Reference number 202007–2900–004), which was administered in December of 2022. The survey population includes all members of the Pilot—maximum of 3,000 TSMs/Veterans and 30,000 of their nominated NoS members for a total of 33,000. VA will use email with hyperlink to administer the electronic (*i.e.,* Qualtrics) survey, limiting the burden on respondents. The survey will aid in VA's assessment of the effectiveness of the NoS Pilot by: (1) examining the self-reported satisfaction and perceived utility via a series of closed and open-ended questions; (2) analyzing the relationship between participation in the NoS Pilot and certain characteristics of military service (*e.g.,* military occupation specialty [MOS], time in service [TIS], combat exposure) and certain demographics and personal characteristic known or believed to be associated with negative post-transition mental health and/or life outcomes; (3) analyzing the relationship between participation in the NoS Pilot and the use of VA Benefits and resources; (4) identifying areas of improvement for the NoS Program. This assessment will inform a report to the Congress that will recommend whether the Program should be made permanent.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on xx/xx/xx.

Affected Public: Individuals.

Estimated Annual Burden: 75 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annual.

Estimated Number of Respondents: 300.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–06879 Filed 3–31–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Monday,
No. 63 April 3, 2023

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 216, 231, and 238
Passenger Equipment Safety Standards; Standards for High-Speed Trainsets; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 216, 231, and 238

[Docket No. FRA–2021–0067, Notice No. 1]

RIN 2130–AC90

Passenger Equipment Safety Standards; Standards for High-Speed Trainsets

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to amend its Passenger Equipment Safety Standards to modernize Tier I and Tier III safety appliance requirements; update the pre-revenue compliance documentation and testing requirements; establish crashworthiness requirements for individual Tier I-compliant vehicles equipped with crash energy management (CEM); establish standards for Tier III inspection, testing, and maintenance (ITM) and movement of defective equipment (MODE); incorporate general safety requirements from FRA's Railroad Locomotive Safety Standards for Tier III trainsets; and provide for periodic inspection of emergency lighting to ensure proper functioning.

DATES: Written comments must be received by June 2, 2023. Comments received after that date will be considered to the extent practicable without incurring additional expense or delay.

FRA anticipates it can resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to May 3, 2023, FRA will schedule one and will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES:

Comments: Comments related to Docket No. FRA–2021–0067, Notice No. 1, may be submitted by going to *http://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AC90). 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 in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

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.

FOR FURTHER INFORMATION CONTACT: Michael Hunter, Executive Staff Director, Office of Railroad Systems and Technology, telephone: 202–579–5508 or email: *michael.hunter@dot.gov;* or James Mecone, Attorney Adviser, Office of the Chief Counsel, telephone: (202) 380–5324 or email: *james.mecone@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Table of Abbreviations

The following abbreviations are used in this document's preamble:

ATC automatic train control
CE categorical exclusion
CEM crash energy management
CFR Code of Federal Regulations
EA environmental assessment
EIS environmental impact statement
ETF Engineering Task Force
FMECA Failure Modes, Effects, Criticality Analysis
FRA Federal Railroad Administration
HEP head-end power
ICC Interstate Commerce Commission
IIJA Infrastructure Investment and Jobs Act
ITM inspection, testing, and maintenance
LED light-emitting diode
LIA Locomotive Inspection Act
MCAT minimally compliant analytical track
MODE movement of defective equipment
mph miles per hour
MCAT minimally compliant analytical track
MU multiple-unit
NPRM notice of proposed rulemaking
OEM original equipment manufacturer
PA public address
PSWG Passenger Safety Working Group
PTC positive train control
RMS root mean squared
RSAC Railroad Safety Advisory Committee
U.S. United States

I. Executive Summary

This NPRM is based on recommendations from the Railroad Safety Advisory Committee (RSAC) [1] and will complete the Tier III passenger equipment safety standards.[2] This NPRM is proposing new requirements and revisions to two main subject areas: (1) requirements generally applicable to all passenger equipment, such as new passenger service pre-revenue safety performance demonstration, and vehicle design and dynamic qualification; and (2) requirements specific to Tier III passenger equipment, such as general safety requirements and safety appliances, inspection, testing, and maintenance, and movement of defective equipment. FRA estimates the 30-year costs of this proposed rule to be approximately $55.5 million, undiscounted, with the majority of the costs deriving from Tier III equipment ITM requirements. The present value of these costs is approximately $21.7 million, discounted at 7 percent, and $35.5 million, discounted at 3 percent; of note, however, the majority of the costs are incurred only if an operator

[1] RSAC was established to provide a forum for considering railroad safety issues and developing recommendations on rulemakings and other safety program areas. It includes representation from all FRA's major stakeholder groups, including railroads, labor organizations, suppliers, manufacturers, and other interested parties.

[2] Tier I passenger equipment is permitted to travel up to 125 mph; Tier II passenger equipment is permitted to travel up to 160 mph; and Tier III passenger equipment is permitted to travel up to 125 mph in a shared right-of-way and 220 mph in an exclusive right-of-way without highway-rail grade crossings.

chooses to take advantage of flexibilities in the rule.

The benefits of this proposed rule are estimated to be approximately $0.3 million, undiscounted. The majority of the benefits are derived from emergency communication and savings to the Federal Government. The present value is approximately $0.2 million, discounted at 7 percent, and $0.3 million, discounted at 3 percent.

In 2018, FRA issued a final rule adopting new and modified requirements governing the construction of conventional-speed and high-speed passenger rail equipment. FRA notes that it is important to consider the costs and benefits of this proposed rulemaking in conjunction with the costs and benefits of the 2018 rulemaking, as the current rulemaking is necessary to complete the regulatory framework set out in the 2018 final rule. Over the 30-year period of analysis for the 2018 final rule, FRA estimated net regulatory cost savings of $284.8 million (low range) to $541.9 million (high range), discounted at 7 percent. Annualized net regulatory cost savings totaled between $22.9 million and $43.7 million when discounted at a 7-percent rate.

The net costs of this proposed rule are estimated to be approximately $55.2 million, undiscounted. The annualized net costs are approximately $1.7 million, discounted at 7 percent.

NET REGULATORY COSTS

Impact	Present value 7%	Present value 3%
Costs	$21.67	$35.49
Benefits	0.22	0.26
Net Costs	21.45	35.23
Annualized Net Costs	*1.73*	*1.80*

II. Statutory Authority and Regulatory Development

In September 1994, the Secretary of Transportation (Secretary) convened a meeting of representatives from all sectors of the rail industry with the goal of enhancing rail safety. As one initiative of this Rail Safety Summit, the Secretary announced that DOT would begin developing safety standards for rail passenger equipment over a five-year period. In November 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment safety regulations and included it in the Federal Railroad Safety Authorization Act of 1994 (the Act), Public Law 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994). In the Act, Congress also authorized the Secretary to consult with various organizations involved in passenger train operations for purposes of prescribing and amending these regulations and to issue orders under it. See section 215 of the Act (codified at 49 U.S.C. 20133).

Since FRA promulgated the inaugural set of passenger equipment safety standards in May 1999, satisfying the Congressional mandate, FRA has engaged in a number of rulemakings to amend and enhance its passenger equipment safety requirements. Most pertinent to this proposed rulemaking, FRA published a final rule on November 21, 2018, adopting new and modified requirements governing the construction of conventional-speed and high-speed passenger rail equipment. See 83 FR 59182. FRA added a new tier of passenger equipment safety standards (Tier III) to facilitate the safe implementation of nation-wide, interoperable passenger rail service at speeds up to 220 miles per hour (mph). FRA also established crashworthiness and occupant protection requirements in the alternative to those previously specified for Tier I passenger trainsets. Additionally, FRA increased from 150 mph to 160 mph the maximum speed for passenger equipment that complies with FRA's Tier II requirements.

Due to the complexity of the Tier III safety requirements, FRA separated their establishment into two distinct rulemaking efforts. The 2018 final rule primarily established the occupant volume protection and other major structural requirements, such as brake and emergency systems requirements. This NPRM is proposing requirements that would complement those requirements and complete the Tier III rulemaking process.

This proposed rule is the product of consensus reached by FRA's RSAC, which accepted the task of reviewing passenger equipment safety needs and programs and recommending specific actions that could be useful to advance the safety of passenger service, including the development of standards for the next generation of high-speed trainsets. The RSAC established the Passenger Safety Working Group (PSWG) [3] to handle this task and develop recommendations for the full RSAC to consider.

In August 2019, the PSWG convened to discuss the topics considered previously by the ETF that were not included in the initial, Tier III final rule published November 21, 2018.[4] During this meeting, the PSWG reached consensus on revising or establishing, as appropriate, safety standards for Tier I and Tier III safety appliances and non-passenger carrying locomotives. The PSWG also reached consensus on requirements for CEM for a single car or locomotive; Tier III inspection, testing, and maintenance; and movement of defective equipment. On November 26, 2019, the RSAC voted to recommend the consensus items to FRA.

III. Technical Background and Overview

A. Passenger Electronic Hardware and Software Safety

With the proliferation of microprocessor control technologies, the integration of electronic hardware and software on passenger rail equipment has grown exponentially. Software-based electronic systems are currently used to manage virtually all critical subsystems on board a passenger train ranging from primarily passenger comfort features such as air temperature and wireless networking systems, to safety-critical controls and monitoring systems, particularly for braking, traction and diagnostics systems. These systems are generally separate from safety-critical train control technology, such as positive train control (PTC) and automatic train control (ATC), which are governed by part 236.

In the 1999 Passenger Equipment Safety Standards final rule,[5] FRA established § 238.105, Train electronic hardware and software safety, to address ''the growing role of automated systems to control or monitor passenger train safety functions.'' These requirements were revised in 2002 [6] to provide more clarity in the applicability of the requirements to subsystems traditionally considered to perform safety-critical functions and therefore expected to be implemented based on a failsafe philosophy. In 2012,[7] the section was further revised to codify the terms of waivers from the requirements then in § 238.105(d) to provide flexibility for systems to provide either a service or emergency brake application in the event of a hardware/software failure, in lieu of a full-service brake application alone, as originally written.

[3] The Engineering Task Force (ETF) was discontinued when the charter for RSAC expired on May 17, 2018. The RSAC was re-chartered on September 10, 2018, and on February 1, 2019, the RSAC established the PSWG to continue the work of the ETF.

[4] 83 FR 59182.

[5] 64 FR 25591 (May 12, 1999).

[6] 67 FR 19970 (Apr. 23, 2002).

[7] 77 FR 21356 (Apr. 9, 2012).

Also, in 2012, the Locomotive Safety Standards final rule [8] established subpart E of part 229, providing comprehensive requirements for locomotive electronics, and appendix F to part 229, providing recommended practices for design and safety analysis for locomotive electronics. With the publication of the first set of standards for microprocessor-based train control systems in 2005,[9] and requirements for statutorily mandated PTC systems in 2010, the 2012 locomotive electronics requirements and accompanying appendix F to part 229 correspondingly reflected many of the concepts and industry practices that had evolved since § 238.105 was first established in 1999. In doing so, this created slightly overlapping requirements because § 238.105 was not revised with similar language and passenger locomotives, especially cab cars and multiple-unit locomotives common to passenger operations, also qualify as locomotives under part 229 of this chapter and are therefore subject to part 229's requirements. For this reason, the PSWG decided to address the issue by recommending updates to § 238.105 to reconcile the requirements with subpart E of part 229 to help clarify the applicability of the requirements and remove or modify any that may potentially overlap.

These proposed updates to the passenger electronic hardware and software safety requirements in this NPRM would establish uniform safety standards applicable to all safety-critical electronic control systems, subsystems, and components on passenger equipment. At the same time, in recognition of some of the differences between passenger and freight operations, this NPRM would create separate electronic hardware and software safety requirements specifically for passenger operations. However, the proposed requirements are not intended to impact technology or software subject to other FRA regulations, such as 49 CFR part 236.

B. Updates to Pre-Revenue Compliance Documentation and Testing Requirements

FRA is updating the pre-revenue compliance documentation and testing requirements to address and clarify issues that have been identified by FRA and the industry during pre-revenue service testing acceptance for rolling stock, such as the types of testing and compliance validation required, the timing for such activities, and the documentation required. Additionally, with the establishment of Tier III, the additional flexibility afforded by the regulations that allow certain safety elements to be defined by the railroad (*e.g.,* the functionality of a passenger brake alarm) necessitates establishing the means to capture the design and validate the performance of such attributes. Further, experience gained from administering the current pre-revenue service acceptance testing plan requirements under § 238.111 since 1999 has provided FRA the perspective that the industry as a whole would benefit from a more detailed regulation governing the design validation and dynamic acceptance process for passenger rolling stock. This concept was acknowledged by the PSWG, and with considerable help and input from participants, a new approach was developed by creating proposed § 238.110. That section would address design criteria, testing, documentation, and approval, and would separate early-stage, design-related compliance validations (*e.g.,* carbody structure and safety appliances) from the later-stage, over-the-route running tests required under § 238.111, prior to putting the equipment into revenue service.

By separating design criteria from dynamic testing requirements, more clarity can be provided as to the expectations for passenger equipment compliance demonstration throughout the life cycle of a procurement. Proposed § 238.110 would also provide a means for railroads to document critical vehicle platform design criteria and operational performance requirements, systems integration requirements, and assumptions that are used to validate certain safety parameters (*e.g.,* friction coefficient used to determine the minimum required braking distance). The identification of these governing parameters would provide a means for FRA and the railroad to effectively validate safety requirements tied to what would otherwise be configurable criteria, *i.e.,* trainset elements that may differ between trainset manufacturers or trainset types, based on the operating environment, intended service, or even customer preference. It would also ensure that the limit of safe performance of the vehicles is clearly established and would require that new testing or validation be performed if the railroad intended to operate the passenger equipment outside of this established operating paradigm. For example, under this proposal, if a railroad has previously demonstrated a vehicle's safe operation at speeds up to only 100 mph, then additional testing and validation would be required to operate the same rolling stock at speeds above 100 mph. Similarly, if a railroad were to acquire passenger equipment from another railroad where it is operated with a longer minimum safe braking distance than it would be on the acquiring railroad, then the acquiring railroad would need to perform additional pre-revenue acceptance testing on its property to validate that that braking system is still compliant with the requirements of this part in the new operating environment.

Much of proposed § 238.110 formalizes and memorializes what is industry best practice. However, this proposal contains a significant addition above what is currently industry practice in the requirement for railroads to develop a ''vehicle qualification plan.'' This proposed plan would require the railroad to take into consideration the entire compliance demonstration process, from the early stages of a project through the creation of tools such as a compliance matrix. This would help ensure the railroad, rolling stock supplier, and FRA effectively work from the same ''sheet of music,'' by determining what regulatory metrics must be met to achieve compliance, and then what constitutes an effective method to demonstrate that compliance, either by validation testing, physical inspection, design review, analysis, calculation, computer modeling, or some combination thereof.

By proposing to separate the requirements that were intrinsically considered part of the current language in § 238.111 into two sections (§§ 238.110 and 238.111), FRA would be able to provide more clarity as to the procedural and documentation requirements for the entire compliance validation process, particularly for Tier III where the documentation of configurable elements may be essential to establishing the expected safety performance which is to be demonstrated. In this spirit, the proposal would refine and expand upon much of the current § 238.111 language to reinforce expectations and process considerations for key documentation, including test plans, procedures, and results. Further, more explicit expectations and examples have been provided for the types of validations required to occur during the final commissioning stages before equipment may enter into revenue service, in addition to how re-built or relocated equipment must be treated.

[8] 77 FR 21348 (Apr. 9, 2012).

[9] 70 FR 11052 (Mar. 7, 2005).

C. Exterior Side Door Safety Systems—New Passenger Cars and Locomotives

As with other components of passenger rail equipment, innovations in the design and construction of door safety systems have generated new issues for potential regulation. The proposed language in this rule for exterior side door safety systems incorporated in new passenger cars and locomotives, developed from recommendations by RSAC, would revise § 238.131 to address newer door designs, with a specific focus on plug doors (*i.e.,* doors composed of a sliding panel that opens and slides along the side of the car, rather than retract into a pocket; when closed, the door conforms to the side of the car to seal out environmental noise and minimize aerodynamic resistance). This proposed language would address the additional function of a plug door in regard to a high-speed trainset and the system design pursuant to American Public Transportation Association (APTA) standard PR–M–S–18–10, ''Standard for Powered Exterior Side Door System Design for New Passenger Cars.'' As revised, § 238.131 would establish provisions for passenger equipment equipped with plug-style side doors that do not provide a minimum 1.5-inch gap at the leading edge of the door when the emergency release mechanism is activated and permit a speed interlock to prevent operation of the emergency release mechanism when the vehicle is moving.

Although the proposed revisions to § 238.131 could require stakeholders to apply or construct additional signage or handles, the expected efficiency enhancement in the equipment procurement and development process resulting from acceptance of the existing functionality of the plug door design could justify any such burden.

D. Alternative Crashworthiness Requirements for Evaluating Tier I Equipment Utilizing Crash Energy Management (CEM) on Individual Vehicles

The final rule published on November 21, 2018, included crashworthiness requirements for certain Tier I trainsets, but not for individual passenger rail vehicles or locomotives. And although there is no requirement for the development of CEM components at the individual Tier I passenger rail vehicle or locomotive level, some railroads and other stakeholders have nonetheless demonstrated an increased interest in the construction and installation of CEM components at the individual passenger rail vehicle or locomotive level. To augment existing regulations on CEM and provide guidance for the development and use of CEM at the individual vehicle level, FRA proposes adding new requirements providing alternatives for evaluating crashworthiness and occupant protection of individual vehicles equipped with CEM based on the RSAC recommendations.

The proposed alternative requirements would provide guidance and a means for evaluating individual locomotives or passenger rail vehicles that are fully compliant with existing Tier I structural requirements and have additional CEM features incorporated into their structure to operate within conventional, Tier I-compliant trains. These evaluation requirements would not apply to Tier I trainsets designed to alternative crashworthiness requirements under § 238.201 and appendix G to part 238 or single pieces of equipment with traditionally compliant structures outfitted with pushback couplers as the only CEM feature.

By establishing alternative requirements for evaluating crashworthiness and occupant protection of Tier I equipment utilizing CEM on individual vehicles, FRA would create clarity and reduce uncertainty for stakeholders who pursue the development of CEM at the individual vehicle level. Such clarification could also reduce the burden and time required for FRA to evaluate compliance issues related to passenger equipment utilizing CEM on an individual vehicle.

E. Safety Appliances for Non-Passenger Carrying Locomotives and Passenger Equipment

Coinciding with the development of safety appliance requirements for Tier III equipment, the PSWG also looked at updating the safety appliance requirements for modern Tier I passenger equipment. While safety appliance regulations have long existed for passenger cars under 49 CFR part 231, these standards are derived, in most cases verbatim, from the requirements set forth by the Interstate Commerce Commission (ICC) in 1910 and guidance of the Master Car Builders Association around the turn of the twentieth century.[10] While these requirements have proven to be sufficient for the types of passenger cars they were explicitly developed to address (passenger train cars with wide vestibules, passenger train cars with open end platforms, and passenger train cars without end platforms), they generally have not been updated to reflect modern advancements in passenger train equipment or human ergonomics in over 100 years since they were adopted by the ICC. Likewise, they are based on individual cars that were common on railroads at the turn of the twentieth century, and do not reflect vehicle designs that utilize some form of semi-permanent coupling, such as fixed trainset configurations, or even married-pair, MU locomotives. The PSWG determined this would be a good opportunity to update the regulations to account for these modern vehicle types and apply more modern requirements, in addition to updating and reconciling the regulatory framework with the current APTA standard, APTA–PR–M–S–016–06, ''Standard for Safety Appliances for Rail Passenger Cars.'' Specifically, FRA is taking this opportunity to update some requirements to reflect more modern design requirements based on recommendations particularly relating to strength and attachment requirements. These new standards, developed by the PSWG, reflect the significant changes in material and engineering design practice that have occurred since the first standards were adopted, when timber and iron were still the predominant railcar building materials.

As modern Tier I passenger equipment is functionally similar to Tier III high-speed trainsets in many ways, FRA decided that a single baseline set of requirements could be adopted for certain passenger carrying vehicles. It should also be noted, however, that while this proposed rule would establish and clarify requirements that could be used for both new and existing passenger equipment, it is not intended to replace the established regulations. Because passenger railcars tend to have long service lives in North America, there will remain a perpetual need to maintain the existing regulations for cars built to those standards, in addition to private cars and special car types (*e.g.,* baggage) that are based on car types that are not addressed by contemporary standards.

This proposed rule would also create a new regulatory section for Tier I non-passenger carrying locomotives. The proposal incorporates applicable requirements from part 231 pertaining

[10] While various safety appliance standards were developed for different classes of equipment throughout the development of railroads in America, the publication titled, ''United Sates Safety Appliances for All Classes of Cars and Locomotives,'' M.C.B. Edition, published by Gibson, Pribble & Company, represents one of the first sets of comprehensives guidance on the matter. This guidance was later adopted by the ICC, and subsequently FRA, as regulation.

to passenger locomotives and various other car types that have historically been used to define the requirements for monocoque, semi-monocoque, and cowl unit [11] passenger road locomotives. Currently, the safety appliance requirements for road locomotives are primarily based on § 231.15 (Steam locomotives used in road service), and § 231.17 (Specifications common to all steam locomotives), which are also virtually unchanged from the original ICC standards. The existing regulations were not developed to specifically address the common designs utilized by diesel-electric or electric locomotives in passenger service within North America. Through the adoption of these proposed standards, FRA would help provide clarity and uniformity in how the Safety Appliance Act (49 U.S.C. ch. 203) is applied to all modern passenger road locomotives.

Current FRA regulations for safety appliances are based on longstanding statutory requirements for individual railroad cars used in general service. These requirements are primarily intended to keep railroad employees safe while performing their essential job functions. Historically, these duties have revolved around the practice of building trains by switching individual cars or groups of cars and are not specifically applicable to how modern, high-speed passenger equipment is designed and operated. The application of such appliances would require a significant redesign of high-speed rail equipment and would create aerodynamic problems particularly with respect to associated noise emissions. Therefore, FRA proposes to exempt Tier III (and certain Tier I) equipment from the following requirements of 49 U.S.C. ch. 203: (1) couplers that couple automatically by impact, and are capable of being uncoupled, without individuals having to go between the ends of equipment; and (2) secure sill steps and grab irons or handholds on the vehicle's ends and sides.

Rather than apply legacy requirements that are inappropriate for the proposed equipment design and service environment, this proposed rule focuses on how to provide a safe environment for employees as it pertains to modern high-speed equipment and operations. In this respect, the proposed rule would define specific safety appliance performance requirements applicable to these modern trainsets subject to the rule. By focusing on employee job functions, rather than mandating specific legacy designs for dissimilar equipment, the proposed approach would likely not only improve safety for railroad employees, but also provide flexibility for superior designs based on modern ergonomics and eliminate appliances that might otherwise encourage their use even though their functionality is moot (*e.g.,* riding on side sills despite an inability to couple/decouple cars).

Under 49 U.S.C. 20306, FRA may exempt a railroad or railroads from the above-identified statutory requirements for safety appliances based on evidence received and findings developed at a hearing demonstrating that the statutory requirements ''preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations under existing law.'' FRA notes that 49 U.S.C. 20306 does not require a separate public hearing as related to Tier III (and certain Tier I) equipment for each new vehicle design. FRA conducted hearings in 2009, 2019, and 2020 addressing both Tier III and Tier I trainsets.[12] Based on these hearings, FRA has determined that the equipment design regarding the application of safety appliances as proposed in this NPRM is substantially similar among the vehicle types.

Accordingly, FRA believes it is appropriate to consider relief under the discretionary process established under 49 U.S.C. 20306 and proposes to adopt the requirements proposed in this NPRM under its statutory authority as part of this rulemaking without holding an additional public hearing, as an additional public hearing would not develop any new facts.

F. Tier III Inspection, Testing, and Maintenance, and Movement of Defective Equipment

In developing new standards for modern high-speed trainsets, the PSWG deliberately separated later-stage design elements and operational-related requirements from those early-stage design issues that influence the vehicle platform (*e.g.,* vehicle carbody design requirements). In this manner, the 2018 final rule provided a level of regulatory certainty for Tier III procurements to move forward, while providing additional time for the PSWG to help mature the remaining standards governing elements that are more critical to the later-stage equipment production and operational testing phases of such procurements. Following this concept, the development of the inspection, testing, and maintenance (ITM) requirements for Tier III trainsets was identified as an essential part of this second rulemaking to help complete the Tier III regulatory framework. While many of the elements in the 2018 rulemaking established a certain level of safety from a design perspective, the ITM requirements are intended to ensure that railroads can maintain the expected level of safety throughout the life of the equipment.

To facilitate the development of appropriate ITM requirements, along with clarifying the applicability of general safety requirements (see Section III.G, General Tier III Safety Requirements, below) for modern high-speed trainsets, the PSWG considered the inspection and maintenance needs of modern trainsets based on current global practice, in comparison to longstanding North American practice established for locomotives, passenger equipment, and passenger brake systems codified in parts 229 and 238, respectively.

A guiding light for this effort has been the experience implementing, and relative success of, the ITM requirements established for Tier II equipment under subpart F of part 238. Unlike many of the explicit requirements and intervals used for conventional Tier I passenger equipment in subpart D of part 238, the Tier II requirements provide a broader approach to ITM, setting out various parameters the railroad must follow in determining the appropriate procedures and periodicity for inspections, tests, and maintenance specific to the equipment it operates, as approved by FRA. This approach utilizes the development of a comprehensive ITM program, appropriate for the equipment design and technology, that can then be enforced and managed through an FRA approval process that includes an annual review of the railroad's program to monitor its effectiveness. When this approach was established in the 1999 final rule, it marked a significant departure from conventional practice, but this departure was viewed as appropriate given the nature of high-speed trainset technology, and the fact that the equipment's operational limits would be more closely defined and overseen than for conventional equipment. Since this parallels the need and operational considerations for Tier III trainsets, the approach was viewed as a logical starting point for the PSWG. This rule, as proposed, reflects the desire of the PSWG to continue the success of the Tier II ITM approach,

[11] For the purposes of this rulemaking, ''cowl unit'' locomotives are locomotives with a traditional frame, but whose mechanical components and walkways are enclosed within a non-structural, non-load bearing element, typically made of steel or other metal alloy.

[12] *See* Docket numbers FRA–2006–25040, FRA–2019–0066, and FRA 2019–0068.

while incorporating lessons learned by FRA through applying subpart F of part 238 to the National Railroad Passenger Corporation's (Amtrak) Acela fleet.

In particular, the proposed rule maintains the approach of subpart F of part 238 and the concept that an ITM program for Tier III trainsets should have the flexibility to be modified and updated based on verifiable data and the evolution of technology integrated into these high-performance trainsets. The requirements, as proposed, effectively perform two regulatory functions. First, they would require the railroad to establish the safety-critical maintenance needs for the trainset and its components, the appropriate periods for inspections, and the means by which inspections or maintenance must be performed (*i.e.,* tools and methods). Second, they would establish the qualification requirements of the personnel designated to perform such activities.

Additionally, this proposed rule would establish requirements for the movement of defective Tier III equipment, should a non-compliant condition arise where efficient repairs cannot be performed (*e.g.,* such as an en-route failure of a safety-critical component). The requirements are intended to complement the ITM program, which would effectively establish the safe operating conditions required for the intended service of the trainsets and therefore be integrated into the same proposed subpart I. Together, these would require the railroad to establish the conditions under which defective equipment can be moved, the conditions movements may occur when defects are discovered during revenue service (*e.g.,* en-route failures), the associated procedures that must be followed, including identifying who may determine that the movement is safe to make, and documentation requirements.

G. General Tier III Safety Requirements

This proposed rule includes a number of provisions that would adopt certain relevant general safety requirements of part 229 and apply them to Tier III trainsets. As with most of the proposals in this NPRM, these provisions were developed from consensus recommendations by the RSAC.

Overall, the proposals cross-reference relevant sections of part 229 for Tier III trainsets aiming to distinguish legacy locomotive requirements of part 229 from those requirements more appropriate for modern high-speed passenger equipment. Additionally, the proposal would provide consistency between the general safety standards for Tier III trainsets and those standards applicable to trainsets qualified at other tiers, and to ensure that Tier III trainsets remain free of any condition that endangers the safety of the crew, passengers, or equipment.

FRA notes that the proposed rule text to implement this initiative would make various sections and specific requirements of part 229 directly applicable to Tier III trainsets by cross-reference, rather than simply repeat numerous similar or identical requirements in part 238. This approach hopefully fulfills the intent by resolving ambiguity about applicability of these part 229 requirements to Tier III trainsets and avoiding drafting errors in the future if a requirement under part 229 changes without otherwise similarly changing a companion provision under part 238. FRA recognizes that this part uses some traditional terms, such as locomotive, when describing certain requirements. However, the use of the term locomotive, or other similar terms, should not be an impediment to compliance with the requirements of this proposed rule. Where appropriate, additional clarifying language has been included in the section-by-section analysis or rule text, or both, to help make the requirement and its application clear. FRA invites comments on these sections, below.

In addition, FRA invites comment on whether it is more appropriate for part 229 not to apply to Tier III equipment, *in toto.* There may be some benefit in wholly separating Tier III from the requirements of part 229 for clarity and ease of use of the regulation. FRA notes, however, that even should part 229 be made not applicable to Tier III equipment, the requirements of the Locomotive Inspection Act codified at 49 U.S.C. ch. 207, would still apply independently. In inviting comment on this approach and its validity, FRA also seeks comment on whether it is more appropriate to make only certain sections under part 229 inapplicable to Tier III equipment, and if so, which sections specifically.

H. Congressional Mandates Under the Infrastructure Investment and Jobs Act

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (IIJA), Public Law 117–58, 135 Stat. 429. As part of the IIJA, Congress directed FRA, as the Secretary's delegate, to promulgate regulations concerning periodic inspection plans for emergency lighting and pre-revenue service safety validation plans. Secs. 22406 and 22416. Congress also directed FRA, as the Secretary's delegate, to promulgate regulations ''as may be necessary for high-speed rail services[.]'' Sec. 22419 (codified at 49 U.S.C. 26103). Through this rulemaking, FRA is addressing both these substantive mandates while promulgating regulations that are necessary for the implementation of high-speed rail services in the United States.

Under Sec. 22406 of the IIJA, FRA must initiate a rulemaking to require that all rail carriers providing intercity passenger rail transportation or commuter rail passenger transportation develop and implement periodic inspection plans to ensure that passenger equipment offered for revenue service complies with the requirements of this part. This includes ensuring that, in the event of a loss of power, there is adequate emergency lighting available to allow passengers, crewmembers, and first responders to orient themselves to identify obstacles and to safely move through and evacuate from a rail car. This proposed rule would satisfy this requirement.

Under Sec. 22416 of the IIJA, any railroad providing new, regularly scheduled, intercity or commuter rail passenger transportation, an extension of existing service, or renewal of service discontinued for more than 180 days to develop and submit for review a comprehensive pre-revenue safety validation plan to FRA no less than 60 days prior to the start of revenue service. Once submitted, the railroad must adopt and comply with the plan. This section of the IIJA also requires FRA to develop conforming regulations to implement this section, which are proposed under § 238.108.

IV. Section-by-Section Analysis

Part 216—Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment

Section 216.14 Special Notice for Repairs—Passenger Equipment

FRA proposes to revise § 216.14(c) to add a cross-reference to § 238.1003, which would contain the requirements for movement of defective equipment for Tier III trainsets. This change would harmonize part 216 with the proposed changes to part 238 contained in this rulemaking applicable to Tier III equipment.

Part 231—Railroad Safety Appliance Standards

Section 231.0 Applicability and Penalties

FRA is proposing to add paragraph (b)(6) to this section to harmonize part 231 with the changes proposed to part

238 in this NPRM. As FRA is proposing standalone and comprehensive safety appliance requirements for Tier III trainsets under proposed § 238.791, this rule would make part 231 not applicable to Tier III trainsets.

Part 238—Passenger Equipment Safety Standards

Subpart A—General

Section 238.5 Definitions

FRA is proposing to revise existing definitions and add new definitions to this part to clarify the meaning of important terms and minimize potential for misinterpretation of the rule. FRA requests public comment regarding the proposed terms to be defined in this section and whether definition of other terms is necessary.

FRA proposes to revise paragraph (2)(i), the definition of ''in service,'' to include a reference to the movement of defective equipment provisions of § 238.1003 for Tier III equipment.

FRA proposes to add a definition of ''clear length,'' as applied to handholds and handrails, to mean the distance about which a minimum 2-inch hand clearance exists in all directions around the handhold or handrail, with intermediate supports on handrails considered part of the clear length. FRA proposes to add this definition to clarify the appropriate measurement for determining compliance with part 238's requirements.

FRA proposes to add a definition of ''crew access side steps'' to mean a step or stirrup, or a series of steps or stirrups, located on the carbody side to assist an employee boarding the equipment or exiting from the equipment to ground level through an exterior side door dedicated for train crew use. FRA proposes to add this definition to clarify the safety measures necessary for crewmembers operating passenger equipment with no provisions for platform-level boarding.

FRA proposes to add a definition of ''representative segment of the route'' to mean either a continuous track section or a compilation of track no less than fifty miles in length that consists of a curvature distribution that is within two percent of the curvature distribution of the complete line segment (as evaluated using the root mean squared (RMS) of the differences between the two distributions), a segment or segments of tangent track over which the intended maximum operating speed can be sustained, and any bridges and special trackwork that are within the track section(s). Depending on the size of the railroad, a ''representative segment of the route'' could include the entire system in order for the ''representative segment of the route'' to consist of a segment of tangent track over which the intended maximum operating speed can be sustained, any bridges and special trackwork, and have a curvature distribution that is within two percent of the curvature distribution of the complete line segment (as evaluated using the RMS of the differences between the two distributions). FRA proposes to add this definition to clarify the appropriate methods of qualification testing for passenger equipment to determine compliance with requirements addressing vehicle/track interaction.

FRA proposes to define ''Tier IV system'' to mean any railroad that provides or is available to provide passenger service using non-interoperable technology that operates on an exclusive right-of-way without grade crossings, not comingled with Tier I, II, or III passenger equipment or freight equipment, and not physically connected to the general railroad system. FRA proposes to add this definition to establish a classification and foundation applicable to passenger equipment that is subject to FRA regulation but falls outside the scope of the existing tier classifications. Unlike what was recommended by the RSAC to FRA, FRA is not proposing to include language in the definition that references a particular type of regulatory framework. FRA notes that the type of regulatory mechanism FRA employs to ensure effective safety oversight would not be consequential to whether a particular technology is considered a ''Tier IV system.'' FRA welcomes comment on the use of the term ''Tier IV,'' or an alternative categorization, to identify the type of system described in this paragraph.

Section 238.19 Reporting and Tracking of Repairs to Defective Passenger Equipment

FRA is proposing to amend this section to harmonize the existing requirements with proposed new requirements applicable to Tier III passenger equipment. As part of the RSAC consensus recommendations, RSAC recommended that FRA issue regulations specific to Tier III equipment with respect to reporting and tracking of repairs made to defective Tier III equipment, so that these requirements would be included as part of the Tier III ITM requirements under proposed § 238.903. The recommended approach was based on the existing requirements codified under this section (§ 238.19). Yet, after further consideration, FRA is proposing to simply amend this section rather than add these requirements to subpart I, for clarity.

Specifically, FRA is proposing to amend paragraphs (a), (b), and (d). In proposed paragraphs (a)(4) and (5), FRA would add the term qualified individual to account for the nomenclature's use under subpart H and proposed subpart I for Tier III equipment.

In the proposed revision to paragraph (b), FRA would redesignate paragraph (b) as paragraph (b)(1) and add new paragraph (b)(2). In proposed paragraph (b)(2), FRA would add record retention requirements for reporting and tracking system records for Tier III equipment regarding the information in paragraph (a). FRA is also proposing that for Tier III equipment, the records be retained for at least one year.

In FRA's proposed revision to paragraph (d), FRA would revise the paragraph heading, redesignate paragraph (d) as paragraph (d)(1), and add new paragraph (d)(2). Under proposed paragraph (d)(2), FRA would add the requirement that operators of Tier III equipment designate locations where repairs to safety-critical systems on Tier III equipment can be made, including repairs to Tier III brake systems. This requirement would follow the requirements in existing paragraph (d)(4) that such designations be made in writing, that the written designations be provided to FRA and made available for inspection and copying, and that the list of repair points could not be changed without at least 30 days' advance notice provided to FRA.[13] Further, FRA would require that Tier III trainsets not leave designated brake repair points with anything less than the required operational braking capability. This means that a trainset could leave the designated brake repair point with less than its maximum designed braking capability, still retaining its required operational braking capability, but could not do so for a period exceeding 5 consecutive calendar days under proposed § 238.1003(d)(1). This proposal is based on international, service-proven practice and FRA's approach to inspection, testing, and maintenance.

FRA notes that it has introduced two new terms under proposed paragraph (d)(2), exclusive to Tier III equipment: required operational braking capability and maximum designed braking capability. As further discussed below under proposed §§ 238.903(a)(8) and 238.1003(d), the required operational braking capability with respect to Tier III equipment would be the capability of

[13] 64 FR 25540, 25587–25588.

the trainset to stop from its maximum operating speed within the signal spacing existing on the track over which the trainset is operating under the worst-case adhesion conditions defined by the railroad. This would also be consistent with § 238.731(b). Maximum designed braking capability would be the maximum braking capability of the Tier III trainset as designed—a performance element of a Tier III trainset that must be specified by the railroad under proposed § 238.110(d)(2)(ii).

Subpart B—Safety Planning and General Requirements

Section 238.105 Passenger Electronic Hardware and Software Safety

FRA is proposing to revise this section to clarify the requirements of this section and to reconcile overlapping requirements with subpart E of part 229 of this chapter. It has been FRA's experience over the last decade that much ambiguity exists with the correct application of part 238 requirements and similar requirements under part 229. In FRA's view, the requirements that are being proposed have been applicable to the passenger industry, consistent with the applicability dates listed in the introductory text of this section. FRA is also making clear that it is not expanding the applicability dates.

Under paragraph (a), FRA is proposing to make editorial changes and is also proposing to permit railroads to maintain the hardware and software safety program in either a written or an electronic format.

Additionally, FRA is proposing to swap current paragraphs (b) and (c) with each other, redesignating current paragraph (b) as paragraph (c) and current paragraph (c) as paragraph (b) for clarity and organizational purposes. Further, FRA is proposing to add a new requirement under proposed paragraph (b)(8). Proposed paragraph (b)(8) would make explicit that the safety analysis outlined in proposed paragraph (c) is a required part of the hardware and software safety program required under paragraph (a) of this section.

Under proposed paragraph (c), FRA is providing additional detail on how to perform the safety analysis that is being proposed under paragraph (b)(8). FRA is proposing to use the term ''safety analysis'' rather than the legacy term ''safety program,'' to make clear that this is an analysis to be conducted as part of the broader safety program rather than a standalone program. Additionally, FRA is proposing that the safety analysis establish and document the minimum requirements governing the development and implementation of all products subject to this section. Further, the safety analysis, as proposed, would be based on good engineering practice and should be consistent with the guidance contained in appendix F to part 229 of this chapter in order to establish that a product's safety-critical functions operate with a high degree of confidence in a fail-safe manner. As proposed, the safety analysis would be based on a formal safety methodology, to include a Failure Modes, Effects, Criticality Analysis (FMECA), verification and validation testing for all hardware and software components and their interfaces, and comprehensive hardware and software integration testing to ensure that the hardware and software system functions as intended.

FRA is proposing to revise paragraphs (d) and (e) simply by adding paragraph headings.

FRA is also proposing to add paragraph (f) to this section to make explicit which specific requirements from subpart E of part 229 are being made applicable to passenger equipment. Consistent with the discussion above regarding the applicability of this section, FRA is proposing to reference the applicability dates set forth in § 229.303(a)(1) and (2), to make clear that FRA is not intending to expand the applicability of these requirements. In proposed paragraphs (f)(1) through (6), FRA has listed each provision of subpart E of part 229 being made applicable to passenger equipment. Accordingly, if a provision in subpart E of part 229 is not listed in this paragraph (f), then that requirement would not be applicable to passenger equipment under this part.

Additionally, FRA is proposing to add paragraph (g) to this section. Proposed paragraph (g) would add a requirement that railroads prepare a Vehicle Communication and Control System Vulnerability Assessment identifying potential system vulnerabilities, associated risk (including exploit likelihood and consequences), countermeasures applied, and resulting risk mitigation.

Further, FRA is proposing to add paragraph (h) to this section, which would add a requirement that suppliers of safety-critical railroad products notify FRA of any safety-critical product failures. By requiring this notice to FRA, FRA may in turn help ensure that notice of the faulty product is provided to other possible users of the equipment.

Section 238.108 New Passenger Service Pre-Revenue Safety Performance Demonstration

Pursuant to Section 22416 of the IIJA, FRA is proposing to add requirements for new passenger service pre-revenue safety performance demonstration. This proposal incorporates the requirements of the IIJA and provides additional direction for railroads to assist them with the development and execution of pre-revenue safety and operational readiness demonstration. These proposed requirements would apply to any new passenger rail service subject to FRA safety jurisdiction, including line extensions and the resumption of service if passenger rail service has not been present on a line for more than 180 days. This proposed section would not apply to the temporary re-routing of existing passenger service due to weather events, emergency scenarios, or planned PTC maintenance under § 236.1005(g).

Through this proposed section, FRA would require railroads and project stakeholders to use safety and operational readiness as the deciding factors as to when revenue passenger service should begin over a line, rather than an earlier date influenced by other factors. As an example, FRA is aware of an instance where the use of emergency phones located in a railroad's stations knocked out the signal system of the railroad as the two systems were using the same support infrastructure (a router). However, this problem was only discovered through happenstance, and not part of an overall system safety and operational readiness evaluation before the rail service began. This example is provided to illustrate the scope of the intended safety performance demonstration and the critical evaluation necessary to accomplish the goals of this proposed section.

Proposed paragraph (a)(1) establishes who must submit a pre-revenue safety validation plan. The requirements would apply to any railroad subject to the requirements of part 238 regardless of tier of service, or any other responsible entity providing new, regularly scheduled, intercity or commuter passenger service, an extension of existing service, or the re-start of service that has been suspended or otherwise discontinued for more than 180 days. These requirements would apply regardless of whether the railroad is already operating similar service. For example, an existing commuter railroad that is already providing commuter service would still need to comply with the proposed requirements of this section for any new commuter rail line

or physical extension of its existing network. A plan would not be required for changes in service frequency or other modifications to existing services, such as changes to contract operators (or other contracted activities), or the addition of in-fill stations. However, a railroad proposing to operate new passenger service over a line that already provides passenger service would still be required to develop a plan under this section.

Proposed paragraph (a)(2) outlines the content requirements for the proposed pre-revenue safety validation plan and would require that it be submitted to FRA for review no less than 60 days prior to the start of the service's safety demonstration period, the requirements of which are outlined further in this section. Proposed paragraph (a)(2)(i) would require that the railroad provide the status of all appliable safety plans or regulatory programs, and any associated certifications, qualifications, and employee training required for the start of revenue service, that are enumerated in proposed paragraphs (a)(2)(i)(A) through (K). The railroad must be able to demonstrate that these programs, plans, certifications, qualifications, and employee training would be not only substantially complete and/or in place to support the service, but that it would also adequately execute the programs or plans as intended. FRA may look to validate this with field inspections during the service demonstration period. For example, if an employee (or contractor) is required to comply with the railroad's on-track safety program for the duties being performed, FRA would expect that field inspections would validate that the employee has received training and is knowledgeable on the requirements of the railroad's on-track safety program. In providing its pre-revenue safety validation plan, the railroad should pay particular attention to the completion of required activities, testing and certification (especially engineer and conductor certification), the adequacy of its training programs, and appropriate close-out or mitigation of any identified hazards as part of its system safety planning efforts. Additionally, the railroad would be required to provide data indicating which safety-related employees are required to receive training, qualifications or other certifications, and the status of those programs (the number who have completed each step) as identified in proposed paragraphs (a)(2)(i)(H) and (I). Completion of FRA's ''new starts'' process may satisfy this requirement.

Proposed paragraph (a)(2)(ii) would require the railroad to provide a description of how it would measure ''substantial completion'' of the system. This must include items such as any tests or validations to be performed by contractors for facilities, structures, systems, or other major construction activities that must be performed before they can be accepted by the railroad, or before testing or revenue service can begin. Because system level testing and integration testing often require the availability of substantially complete infrastructure and supporting systems to conduct testing, the railroad must be able to demonstrate that it would have adequate access to these facilities to properly perform required testing under FRA's regulations. The availability of core infrastructure and systems is also necessary for the service demonstration period and FRA would require that the safety and acceptance of these core elements be addressed on their own merit, and that such activities would not conflict with required tests or other activities identified in this section due to schedule compression.

Further, should there be a host-tenant relationship, and the railroad submitting the pre-revenue safety validation plan is not the host railroad, then the host railroad and the railroad submitting the pre-revenue safety validation plan must coordinate. Specifically, FRA is concerned about host railroads scheduling construction activities unbeknownst to the railroad submitting the pre-revenue safety validation plan that could potentially interfere with the safety performance demonstration period (simulated service). To help resolve this concern, FRA is proposing to require that host railroads share pertinent information with the railroad submitting the pre-revenue safety validation plan (when not the host railroad).

Proposed paragraphs (a)(2)(iii) and (iv) would require the railroad to provide details on its proposed operations over the line, and its expectations and plans for its safety performance demonstration and simulated service required under this section. In each of these paragraphs, FRA has listed specific information requirements. These lists are not intended to be exhaustive. Specifically, under proposed paragraph (a)(2)(iv), the railroad would be required to provide its plans for simulated service (*e.g.,* the minimum number or days or successful runs), and its criteria for determining if the simulated service has been successful.

Proposed paragraph (b) outlines the requirements for the railroad's safety performance demonstration period (simulated service) to be performed to demonstrate operational readiness. The safety performance demonstration period would provide the railroad an opportunity to demonstrate operational readiness in a dynamic real-world environment, with all major elements and systems in place. The period may also be used by FRA to conduct inspections to validate that the railroad has effectively trained employees and executed its critical plans and programs.

Proposed paragraph (b)(1) specifies that a minimum period of simulated service must be successfully performed prior to the start of revenue service (to be expressed in days or number of runs as required under proposed paragraph (a)(2)(iv)). Proposed paragraph (b)(1)(i) provides requirements for new operations or physical extensions to existing services. These services require the most activities to ensure operational readiness and should be conducted using the full proposed schedule to ensure that the service schedule can be practically implemented to support safe operations. For example, the railroad must be able to demonstrate that the scheduled running times and turns can be performed reliably, even when factoring in common scenarios that might affect service, such as speed restrictions or mandatory directives. This would ensure that crews are not subjected to undue stress and potential safety concerns when revenue service begins, due to delays that could otherwise be avoided if the schedule and operational readiness had been validated. In FRA's experience, most new operations that voluntarily conducted a period of simulated service prior to commencing revenue service have required a minimum of two to six weeks of simulated service to address issues and ensure operational readiness. FRA notes, however, that the process is not necessarily intended to be linear, and certain activities may also be completed in parallel with the simulated service, when appropriate.

Proposed paragraph (b)(1)(ii) provides considerations for the re-start or re-routing of existing operations. For these situations, the amount of simulated service can vary greatly depending on the scope of the re-started or re-routed service. For example, the re-start of a discontinued service may necessitate running full, scheduled operations for a certain number of days, whereas re-routing of a service may only require a certain number of ''successful'' test runs. The railroad may reach out to and work with FRA in determining the appropriate period based on the individual circumstances.

Proposed paragraph (b)(2) would require the railroad to provide a daily

summary of the activities and results from the safety performance demonstration period, including discussion on any delays, system failures, unexpected events, close calls, or other safety concerns uncovered during simulated service.

Proposed paragraph (b)(3) would require the railroad to correct any safety deficiencies identified during the safety performance demonstration period prior to commencing revenue service. Additionally, this proposed paragraph would require that, if a safety deficiency cannot be corrected, then it must be addressed through mitigations or operational restrictions that would ensure the safety of the operation. Finally, this proposed paragraph would require a final report to be submitted to FRA addressing the complete safety performance demonstration period, specifically detailing the deficiencies uncovered and the associated corrections, mitigations, or operational restrictions imposed. FRA notes that it would reserve the right to require additional corrections, mitigations, or operational restrictions should it determine that those imposed by the railroad would not be sufficient to ensure the safety of the operation.

Proposed paragraph (c) would require a railroad to comply with its plan before revenue service may begin. It would also prohibit a railroad from amending its plan without first notifying FRA, to prevent a railroad from effectively ''moving the goal posts'' to commence revenue service by a pre-determined date if the requirements of the plan have not otherwise been met. In addition, this proposed paragraph would impose a general prohibition against commencing revenue service until the plan has been successfully completed by the railroad, to include the imposition of corrections, mitigation, or operational limitations as required by proposed paragraph (b)(3).

Section 238.110 Design Criteria, Testing, Documentation, and Approvals

To help clarify the compliance demonstration and approval process for passenger equipment, FRA is proposing new § 238.110. This proposed section is intended to complement § 238.111, as proposed to be revised in this NPRM. This section would require the railroad to establish the design criteria and provide the system description for the intended service against which the railroad is demonstrating safety compliance. This proposed section would also provide the ability for the railroad to define certain elements required for Tier III operations, as well as require the railroad to develop a vehicle qualification plan to establish how compliance would be demonstrated. Further, this proposal includes specific language for the demonstration of early-stage, vehicle design matters, such as carbody construction with respect to crashworthiness and safety appliances. In developing this language, FRA worked closely with industry subject matter experts through the RSAC to provide more detail about passenger vehicle compliance demonstration to help clarify the process. FRA welcomes any comments or considerations that might further improve the clarity of this section.

Proposed paragraph (a) outlines the scope of this section and its relationship with § 238.111. Proposed paragraph (a)(1) would make the requirements of this section applicable to new passenger equipment designs (*i.e.,* an equipment design that has not been previously used in revenue service in the U.S.), and rebuilt or modified equipment where the carbody structure or any safety-critical elements have been modified or replaced by a new design not identical to the original component.

While FRA has attempted to provide clear language with respect to when a vehicle design has been altered to a point where an updated demonstration of compliance with the safety standards would be required, FRA recognizes that this can be a matter of nuance, and additional feedback from FRA may be necessary as to when a modification to an existing vehicle platform may have crossed such a threshold. For instance, changes to the traction control or braking systems, modifications to trucks or suspensions systems, changes to the carbody structure or its material, or alterations that change the mass or center-of-gravity of the vehicle (and thus its dynamic performance), are all common examples of when a new safety assessment and compliance demonstration would likely be appropriate.

Under proposed paragraph (a)(2), previously accepted passenger vehicle designs would not be subject to the requirements of this section, except for the development and maintenance of a system description under proposed paragraph (d). Even though development of a vehicle qualification plan would not be required, FRA still would require railroads to develop a system description to capture the critical information of the operating environment of the equipment in case changes are made that would necessitate a new safety assessment and compliance demonstration.

Proposed paragraph (b)(1) would make the railroad responsible for maintaining any documents or evidence related to the design and performance of the vehicle that may be necessary to establish or demonstrate compliance with the safety regulations. Even if material is provided to FRA for review or approval, this would not relieve the railroad from the proper maintenance of its records in this regard. FRA would require that the railroad be able to produce relevant documentation, including any changes or modifications to one or more of the vehicles in its fleet should the need arise, as proposed under paragraph (b)(2). Proposed paragraph (b)(2) would also require that the documentation be maintained for the life of the equipment. If the equipment is leased or sold, this paragraph would require a copy of the documentation to be provided to the lessee or purchasing entity, respectively.

Under paragraph (c), FRA is proposing to require railroads develop a vehicle qualification plan. This plan would assist railroads in demonstrating compliance with the requirements of this proposed section. As proposed, the vehicle qualification plan would be comprised of a system description (which includes certain vehicle design assumptions) and a compliance matrix.

Proposed paragraph (c)(1)(i) contains the requirement for a railroad to develop a system description (a description of the intended operational environment for the equipment), which would cover topics listed under proposed paragraph (d)(1), as well as a listing of assumptions used when designing the equipment. This initial portion of the proposed system description would be for all passenger equipment. Additionally, railroads seeking to qualify Tier III equipment under this section would need to address the required elements for Tier III operations, as listed in proposed paragraph (d)(2).

Proposed paragraph (c)(1)(ii) introduces the concept of a comprehensive compliance matrix (matrix) that must be developed by the railroad to outline the means by which compliance with various safety requirements under FRA's regulations would be demonstrated. This matrix, as proposed, is an extrapolation of what FRA has historically expected under the current language of § 238.111, in that the railroad should be able to identify all tests required to demonstrate compliance under FRA's regulations—whether a carbody structural test to validate compliance with the occupied volume protection requirements, or a braking test performed during the final commissioning stages of a project. Both of these exemplar tests provide critical safety validation of the design and must

occur prior to the use of the equipment in revenue service. But as these two tests can occur years apart, it is not unusual for some to focus on the requirements of current § 238.111 as relating to only those activities that occur when full-scale dynamic testing has begun. By proposing to move this planning requirement into § 238.110 and expand language to require the development of a comprehensive test matrix at the early stages of a project, FRA would ensure the railroad and rolling stock supplier clearly articulate the intended means by which all critical compliance elements of FRA's regulations would be demonstrated. In doing so, the parties would also gain FRA's perspective and feedback on whether the means identified are adequate.

In practice, as proposed under paragraph (c)(1)(ii), FRA is envisioning the compliance matrix as being a table to help identify the requirements for which compliance must be demonstrated (keeping in mind that certain projects, such as equipment modifications, may only require a limited number of items to be assessed), and the means by which compliance would be demonstrated (*e.g.,* testing, analysis, calculations, computer modeling, etc.). This matrix would also allow all stakeholders to identify critical milestones in which an FRA observation, inspection, or approval may be necessary, particularly when testing is required. By doing this early in the process, FRA can work with the parties to set expectations and can coordinate participation or reviews where appropriate, to avoid delays due to inadequate documentation or failure to notify the agency of critical compliance-related activities. Moreover, FRA is contemplating including guidance in an appendix to this part to help guide railroads in properly developing compliance matrices and plans. FRA seeks comment as to whether such an appendix should be included or whether such guidance should be provided in a standalone document.

Proposed paragraph (c)(2) further outlines the process and timing by which a railroad's vehicle qualification plan would be approved. FRA is seeking comment on whether there is utility in explicit FRA approval of this item, the process described, and the timeframe proposed. Proposed paragraph (c)(2)(iii) would simply enforce the execution of the plan by the railroad.

In paragraph (d), FRA proposes that a railroad provide a description of the environment and service in which the passenger equipment is intended to operate (system description), key design criteria and physical characteristics of the equipment, and any assumptions used for key calculations or analysis. This information would help provide a baseline for the configuration and intended operating environment of the equipment against which the safety of the vehicle is being assessed. Such information would be useful when changes or modifications to a vehicle or its operating environment occur, or if the same equipment type is acquired by the railroad, or leased to another railroad, as it would provide a means for the railroad and FRA to determine if any new or different conditions, configurations, or operating parameters might require additional compliance testing or analysis.

For example, proposed § 238.791(j) would require an efficient handbrake or parking brake that is capable of holding a locomotive on the maximum grade condition identified by the operating railroad, or a minimum 3% grade, whichever is greater. If a railroad initially were to procure a passenger locomotive that operates over a network with a maximum grade of 1.3%, that railroad would be required to validate the sufficiency of the design and performance of the handbrake or parking brake when subjected to the minimum forces resulting from a 3% grade. If the same locomotive is leased to another railroad that operates over territory where the maximum grade is 3.5%, the original documentation must indicate to the acquiring railroad that additional validation may be necessary to ensure that the parking brake design is adequate for the characteristics of its new operating environment.

As another example, if a railroad is electing to follow the interior fixture attachment strength requirements under § 238.733(a)(2), which permit an attachment strength sufficient to resist applied loads of 5g longitudinal, 3g lateral, and 3g vertical when applied to the mass of the fixture, then appropriate discussion and documentation must be provided demonstrating the trainset does not experience a crash pulse in excess of 5g.

Proposed paragraph (d)(1) would require the railroad to provide a description of the operational environment to which the railroad's passenger equipment is subject. This would include the defining physical characteristics of the environment that all passenger equipment would operate within, regardless of whether the equipment is intended for conventional or high-speed operations. Paragraphs (d)(1)(i) through (iii), as proposed, would help the railroad categorize and describe the operating environment and conditions, and provides examples for each.

Of these, physical infrastructure as proposed under paragraph (d)(1)(i), would require the most extensive description, encapsulating a number of physical characteristics of the environment that may directly affect the safe operation of the equipment. In this portion of the system description, the railroad should be able to articulate the limiting track geometry (including turnout geometry), maximum grade, the minimum required stopping distance, and any other safety-critical limits or thresholds within which the equipment would be expected to operate safely. It is critical to note that the characteristics or limits listed are intended to help establish the operating limits of the equipment itself and are not intended simply to catalog the characteristics of the railroad.

For example, when identifying limiting track geometry conditions, if the equipment is not designed to navigate anything less than a turnout having a certain curvature, then that is a limiting track geometry condition for the equipment that must be identified. The railroad may own or have access to track with even more limiting geometry conditions, such as turnouts having even tighter curvatures within a yard. Yet, by identifying the known limitations of the equipment to navigate such trackwork, and making known the safe operating limits of the equipment, the railroad can craft operating rules or instructions to ensure that the equipment is either not operated on portions of the railroad where such geometry exists, or operated under appropriate limitations so that the equipment can safely navigate such geometry.

Similarly, proposed paragraph (d)(1)(ii) would require the railroad to identify the universe of systems that the equipment is expected to operate over or interface with. This would primarily include track circuits, control systems, electric traction systems, and wayside detectors and devices. Of particular importance would be those elements essential to signaling, train control, and active grade crossing warning systems. Here, the railroad must also be able to identify the core technologies (*e.g.,* DC, AC, audio frequency overlay) and systems utilized by any host railroads on the routes it is expected to operate over, and whether or not those systems themselves are operating and maintained within their original equipment manufacturer (OEM) specifications. This information can then be used to help the railroad

determine what systems integration and validation testing would be necessary as part of its pre-revenue service acceptance test plan, developed pursuant to § 238.111.

Systems integration has become a critical element in the safe introduction of new passenger equipment in recent years, particularly as it relates to effective track circuit shunting to ensure the safe operation of signal and grade crossing systems. Taking the time to identify and validate performance characteristics of the equipment over these systems within the context of §§ 238.110 and 238.111 would help the railroad ensure that both the passenger vehicle and wayside technologies are operating as designed, and assist in establishing special operating rules, maintenance procedures, or design changes, as necessary, to ensure safe interactions between the two.

Proposed paragraph (d)(1)(iii) would require the railroad to identify any special operating parameters or rules that might apply to the design and operation of the passenger equipment. At a minimum, this must include information on the design time and setup of the alerter, as this design time may need to account for other operating parameters, such as the required minimum stopping distance identified in proposed paragraph (d)(1)(i) of this section.

Proposed paragraph (d)(2) is intended to catalog design and operational variables specific to Tier III equipment. As many of the requirements pertaining to Tier III equipment are more performance-based and technology neutral, it is essential that the railroad identify specific design and operational parameters where such flexibility is provided, so that necessary safety thresholds can be identified and maintained with proper oversight. Braking systems received particular attention in this regard, during the RSAC process, as there are many different, proven approaches to braking technology and operational rules used on high-speed trainsets throughout the world. To this effect, proposed paragraphs (d)(2)(i) through (xiv) catalog the railroad's approach as it relates to Tier III braking technology.

Proposed paragraph (d)(2)(ii), as discussed above under § 238.19, would require the railroad to define the maximum designed braking capacity of the Tier III trainset.

Proposed paragraphs (d)(2)(iii) through (v) are of particular note, as these sections would define the use of emergency braking and its accessibility to crewmembers and the general public. Unlike most conventional operations, the application of an irretrievable emergency brake application may pose a safety risk to the occupants at very high speeds, or within certain locations (*e.g.,* tunnels or bridges), particularly if an immediate stop is unnecessary. As such, many systems throughout the world restrict access to only qualified crewmembers to initiate an irretrievable emergency brake application and utilize emergency brake ''alarms'' for passengers. These alarms notify the engineer that an emergency stop has been requested by a passenger and require the engineer to take some immediate action, while still allowing the engineer to continue train movement if an immediate stop is unnecessary, or if a different location may offer a more appropriate environment to address an emergency (*e.g.,* enabling a train to exit a tunnel if an alarm is activated due to the presence of smoke in a passenger cabin).

Proposed paragraphs (d)(2)(iii) and (iv) would require the railroad to identify both irretrievable emergency brake locations accessible only to crewmembers and passenger brake ''alarm'' locations (if used), respectively, within the Tier III trainset. A picture or diagram may be used to demonstrate compliance.

If passenger brake alarm technology is employed by the railroad, proposed paragraphs (d)(2)(v) through (vii) would require the railroad to specify certain operational aspects of the technology. For example, proposed paragraph (d)(2)(v) would require defining the time period in which the trainset remains under full control of the engineer after an alarm is pulled. Like an alerter, this is intended to ensure that the engineer acknowledges the alarm and takes appropriate action promptly. As proposed, if no action is taken by the engineer in response to the passenger brake alarm, then the trainset's brake system would be required to automatically initiate an irretrievable emergency brake to ensure the safety of the occupants, crew, and trainset.

Proposed paragraph (d)(2)(vi) would require the railroad to detail how the passenger brake alarm would function within station locations, as delayed application of the brakes would be unacceptable if the alarm is activated when a train is departing a station due to a passenger emergency, such as a passenger trapped in a door. Only once a train has safely cleared the station platform would the retrievable aspect of the passenger emergency brake alarm be allowed to engage. To this end, the railroad would have to identify how to achieve this, to ensure that both passengers and crew can immediately stop a train if a dangerous situation is encountered while leaving a station. Nonetheless, as discussed above, there is concern about situations when an engineer may decide against immediately stopping the train following activation of a passenger brake alarm at a station location, such as when in a tunnel if smoke is present. FRA believes that the above discussion provides the necessary clarity on this issue but invites comment.

Proposed paragraph (d)(2)(vii) would allow the railroad to further define the operation of a passenger brake alarm by detailing what steps must be taken by an engineer to retrieve control from a full-service brake application in the event an alarm is activated, within the timeframe proposed by paragraph (d)(2)(v).

Additional core braking parameters are defined in proposed paragraphs (d)(2)(viii) through (xiii). Proposed paragraph (d)(2)(viii) would require the railroad to identify and maintain a copy of the FRA-approved industry standard utilized to comply with § 238.731(f), which requires that main reservoirs be designed and tested according to a recognized industry standard. The railroad would be required to document the actual standard used to qualify main reservoirs for Tier III trainsets in its vehicle qualification plan. Any inspections or tests required by the standard must be incorporated into the railroad's ITM plan as well.

Proposed paragraph (d)(2)(ix) would require the railroad to identify the preset parameters by which it would determine if a Tier III trainset's wheel-slide protection has failed, as required by § 238.731(m)(3). The railroad would be required to document the corresponding operational restrictions within its ITM plan. Similarly, proposed paragraph (d)(2)(x) would require the railroad to provide information on brake system functionality, monitoring, and diagnostics, and any corresponding safety analysis. For example, if a railroad were to utilize an electronic brake system, it must ensure compliance with § 238.105 if deemed-safety critical.

Proposed paragraph (xi) would require the railroad to identify the worst-case grade condition for which the Tier III trainset must be secured.

In relation to § 238.751, proposed paragraphs (xii) and (xiii) would require the railroad to outline the functionality of the cab alerter system, and its integration with the braking system. Specifically, paragraph (xii) proposes to require the railroad to establish the parameters and scenarios in which the engineer must acknowledge the alerter, including which actions reset the timing, and which actions would be

ignored so that the engineer would be required to take some other action or directly acknowledge the alerter.[14] Proposed paragraph (xiii) would require the railroad to outline what steps must be followed by the engineer to recover control should a full-service brake application occur.

The remaining items proposed under paragraphs (d)(2)(xiv) through (xvi) are for optional features that a railroad may elect to include on Tier III rolling stock based on service-proven experience. If the railroad elects to use a technology other than a standard alerter pursuant to § 238.751(e), plans to utilize a feature to dim headlights for extended periods of time on Tier III dedicated rights-of-way pursuant to proposed § 238.767(c), or utilizes a flashing rate other than what is described in proposed § 238.769(b)(2)(i), then it would be required to comply with the requirements specific to each alternate technology as described in proposed paragraphs (d)(2)(xiv), (xv), and (xvi), respectively.

Proposed paragraph (e) outlines the means by which a railroad would be required to demonstrate compliance with the structural carbody design and crashworthiness requirements contained within parts 229 and 238, as applicable. This proposed paragraph would effectively codify FRA's longstanding guidance on the matter, and what the RSAC considered to be industry ''best practice.'' Specifically, proposed paragraph (e)(1) would make clear that compliance may be demonstrated by any appropriate combination of full-scale testing, validated computer modeling (*e.g.,* finite element analysis), or engineering calculations, including manual calculations using accepted and proven engineering formulas.

Designs incorporating dynamically activated CEM components may require additional scrutiny. In practice, some combination of all three is typically provided to establish compliance with structural and crashworthiness requirements. For example, a full-scale test could be used to demonstrate the strength of a collision post, but because this test involves the ultimate load of the material it may not be desirable or safe to conduct a full-scale test where plastic deformation, or even structural failure, would be possible. Consequently, computer modeling and engineering calculations may be used to predict the physical performance of collision posts under certain load conditions, but such modeling must be validated. To this end, testing may also be performed within the elastic-plastic range and, if the model shows good correlation to real-world testing under the same load conditions, FRA would consider the validated model to serve as an adequate demonstration of compliance for loading scenarios that are impractical or unsafe to test at full-scale. Because testing plays such a vital role to compliance demonstration, FRA seeks to ensure close coordination with railroads and their suppliers when such testing is required, especially where complex computer models require validation.

Proposed paragraph (e)(2) outlines the documentation expectations and FRA notification requirements when carbody or structural component testing would be necessary for new, re-built, or substantially modified passenger equipment. Because designs that utilize CEM components rely on the dynamic-plastic deformation of structural components in a predictable and controlled manner, Tier I alternative, Tier II, and Tier III passenger equipment that incorporate such technology would require additional scrutiny. As these designs require models that are used to analyze loading conditions that are more complex than simple, quasi-static loads, to ensure that adequate validation of such models is performed, FRA would require that carbody and crashworthiness test procedures associated with such equipment be submitted to FRA prior to any test being conducted for compliance purposes, as proposed under paragraph (e)(2). Under this proposal, FRA would notify the railroad if FRA intends to witness the test. This would not prohibit a railroad or supplier from conducting preliminary or ''proof of design'' testing without submitting the test procedures to FRA, provided such testing is not intended for validation or compliance demonstration purposes.

To address common interpretation issues related to passenger equipment safety appliances, FRA is proposing to mandate its otherwise voluntary, sample-equipment inspection process as part of proposed paragraph (f). To ensure consistency, the railroad would be required to submit designs for FRA review of all new passenger equipment or modified equipment that include carbody or structural modifications affecting the design of existing safety appliances, proposed to be validated as part of the sample-equipment inspection conducted in accordance with proposed paragraph (g)(2).

Proposed paragraph (g)(1) outlines the process and procedures for submittal and approval of design review, testing, and inspection documentation. FRA proposes to notify the railroad whether the submission is approved or disapproved within 60 days of the submission to FRA. Of particular note are the timeframes for document submission, and associated approval or disapproval, for each type of request. FRA invites comments on the practicality of these timeframes and whether approval of this documentation is necessary in all cases or at all.

Proposed paragraph (g)(2) contains the procedures for the sample-equipment inspection. Though this is commonly known as a sample-car inspection, FRA is proposing to call it a sample-equipment inspection to include different types of equipment that might not be considered a ''car,'' per se (*e.g.,* a Tier III trainset). Proposed paragraph (g)(2)(i) would require railroads to submit to FRA a request for such an inspection at least 45 days in advance of the proposed inspection date. As part of its request, the railroad would be required under proposed paragraph (g)(2)(i)(A) to provide FRA with the first available time and date that the sample equipment can be inspected. Also, under proposed paragraph (g)(2)(i)(B), the railroad would be required to submit, as part of its request, engineering drawings reflecting the design and configuration of the safety appliances, emergency systems and signage, and any other elements to be inspected by FRA as part of the sample-equipment inspection.

Proposed paragraph (g)(2)(ii) details the procedures to be followed should FRA take exception during the inspection. Proposed paragraph (g)(2)(iii) explains that should FRA take no exceptions during the inspection, FRA would provide the railroad with an inspection report stating as such.

Section 238.111 Pre-Revenue Service Acceptance Testing

With the proposed addition of § 238.110, FRA is proposing to revise § 238.111 to focus primarily on the activities associated with dynamic ''on-track'' testing and commissioning procedures that occur during the later stages of a project. These dynamic tests typically occur when prototype or production trainsets are ready to operate over the general railroad system.

Through the separation of static design and dynamic commissioning phases of rolling stock compliance with §§ 238.110 and 238.111, respectively, more clarity can be given to the process of assuring that passenger rolling stock is ready for revenue service. FRA envisions that initially the railroad would look to proposed § 238.110 to ensure compliance with static design

[14] Note, the specific alerter timing would be required under proposed § 238.110(d)(1)(iii).

requirements and items that can be examined as part of a sample-equipment inspection as a means to determine if prototype or production rolling stock is ready to start the dynamic and commissioning phase under § 238.111, even though some overlap may occur between the phases. For instance, it may be desirable to initiate some level of dynamic testing before carbody interiors are completed, which may necessitate the verification of emergency systems after preliminary dynamic testing has occurred.

Regardless, FRA intends that the railroad make use of the combined, pre-revenue planning process under §§ 238.110 and 238.111 to ensure that adequate testing occurs before production sets of equipment types leave the manufacturing facility, so that compliance and quality issues can be addressed by the manufacturer before moving too far ahead into dynamic testing, and thus limiting such issues to initial prototype units. This approach would allow certain elements to be separated so that railroads and manufacturers can take a more focused approach to compliance assurance and commissioning, thereby also allowing railroads to produce a more focused plan for the final stages of testing and commissioning of passenger rolling stock as part of their pre-revenue service acceptance test plans.

While the individual requirements within this section are intended to capture important elements to help validate and document compliance, of equal importance is the planning aspect of the section. FRA would require that railroads use the development and execution of their pre-revenue service acceptance test plans to take a holistic view of their testing and commissioning programs so as to provide both FRA, as well as themselves, insight as to how the various tests and validations would be organized and executed in an effective manner. So, while part of the effort intended by this proposed language is to identify all of the tests that need to be performed before a vehicle can enter revenue passenger service, FRA also would require that the railroad identify how all of these tests relate to each other and other activities that must occur (required preceding events), and the logical order in which they should occur.

Using qualification under § 213.345 as an example, a railroad must consider what core tests should be performed before high-speed testing begins (*e.g.,* tests for proper brake system operation to ensure the safety of the qualification testing), and what tests would require high-speed qualification or special test approval to be performed (*e.g.,* high-speed ATC/PTC tests). Identifying not only the universe of tests to be conducted, but also how those tests interrelate, would help the railroad, its suppliers, and FRA all work together from the same perspective in achieving the goal of putting the equipment safely in service.

Under this proposed revision, this section would remain divided primarily between requirements for ''new'' equipment that has never been used in revenue service before within the United States, and requirements for ''existing'' equipment that is, or has been previously, used within the United States. However, FRA is proposing significant revisions to this section to capture current practice for vehicle dynamic testing and qualification.

The first such significant revision is based on an RSAC recommendation, preferring that the requirements for ''new'' vehicles be outlined first, because they are more comprehensive. Thus, FRA is proposing to reorganize the language so that the requirements for ''new'' equipment are covered first, under paragraph (a) rather than as currently addressed under paragraph (b), and the less comprehensive requirements for ''existing'' equipment are moved to paragraph (b), rather than as currently addressed under paragraph (a). FRA notes, however, that this reorganization could lead to confusion for plans developed prior to the proposed publication of a final rule. While FRA does not foresee this as a problem for the execution of the intent of these requirements, it welcomes comment on whether this reorganization may pose any potential concerns and, if so, invites any potential solutions.

The fundamental requirements of this section would be contained in proposed paragraph (a)(1), which is based on current paragraph (b)(1). This proposed language outlines the minimum content that a railroad would be required to provide as part of a pre-revenue service acceptance testing plan (test plan or testing plan).

Proposed paragraphs (a)(1)(i) and (ii) would require the railroad to identify the physical characteristics and salient features that define both the equipment and its intended operating environment, respectively. The railroad should consider the equipment and its operating environment as parts of a whole within a systems approach to safety. In effect, these two proposed paragraphs ask the railroad to capture the ''control'' variables of the system whose configurations may have measurable effects on the performance of the passenger equipment and its overall safety. Items such as the wheel profile, axle and truck spacing, suspension characteristics, braking rates, mass, and center-of-gravity are just some examples (but in no way an exhaustive list) of the types of vehicle characteristics that must be identified under proposed paragraph (a)(1)(i) that can profoundly affect the safe performance of rolling stock. Similarly, the rail profile and cant, special trackwork geometry, maximum grade, effective track moduli, and signaling and grade crossing technology interfaces are just some examples of the characteristics of the operating environment for which the equipment's performance is being validated against, which would also be appropriate to identify under the requirements of the railroad's system description developed pursuant to § 238.110.

This ''systems'' perspective is key to the intent of §§ 238.110 and 238.111, as it would not only help the railroad establish and document the safety of the equipment, but also the equipment's known and proven configurations and operating conditions, such that a railroad may be able to identify any additional tests that may need to be performed if a vehicle characteristic is changed, or a vehicle is to be operated in a different environment with unproven characteristics (*e.g.,* different track circuit technology which may result in different shunting characteristics).

As the test plan is intended to be an umbrella plan to capture all of the necessary tests needed to demonstrate regulatory safety compliance for passenger equipment, this should include any waivers that are anticipated to be required, even if that test is part of a separate testing approval,[15] as these may be predecessors to, or needed for, other required tests. Thus, proposed paragraph (a)(1)(iii) of this section would require the railroad to identify any approvals, qualification, or waivers from other regulatory requirements in this chapter, that would be required to conduct certain tests under this plan. For example, if tests are to occur on a section of track before a block signal system has been installed, then a waiver from § 236.0(c)(2) may be necessary to test at speeds above 60 mph until the signal system if fully commissioned.

Proposed paragraph (a)(1)(iv) would require the railroad to identify the maximum speed and cant deficiency at which the equipment is intended to operate, as well as any intermediate qualifications it anticipates requesting prior to achieving the intended

[15] Such as § 213.345 or § 236.1035.

maximum speed and cant deficiency to facilitate testing and qualification. For example, if systems integration tests would be required to validate grade crossing functionality at a speed lower than the intended maximum speed and cant deficiency, then an intermediate qualification at a speed and cant deficiency less than the intended maximum would be necessary in order to accomplish such systems integration testing. Accordingly, FRA would expect such an intermediate qualification be referenced in this portion of the test plan.

Proposed paragraphs (a)(1)(v) through (vii) represent the core of the test plan. These proposed paragraphs are intended to capture the railroad's overall testing and commissioning plan and tie these tests to the procedures and records associated with them. FRA would caution the railroad or manufacturer not to overthink this critical part of the proposed regulation, as a simple table may be used to fulfill the requirements of these three proposed paragraphs. What matters most would be the information ascertained by the railroad pursuant to these paragraphs, and there would be no need for narrative or explanations if a succinct format such as a table or matrix is used.

More specifically, proposed paragraph (a)(1)(v) would require the railroad to provide a list of the tests to be conducted as part of its dynamic testing and commissioning phase. This list can be inclusive of all the tests expected to be performed or focused solely on those tests related to demonstrating compliance with regulatory requirements, as outlined in proposed paragraphs (a)(1)(vii)(A) through (D). The railroad should present these tests in some logical order, either chronologically, or by sub-system. Any interdependencies or predecessor requirements (such as waivers or certifications) should also be identified for each test.

The identification of predecessors is critical, as it would help all parties understand the critical path to completion of the testing and commissioning process and should logically tie to the estimated schedule proposed paragraph (a)(1)(vi) would require. FRA notes that the schedule identified in proposed paragraph (a)(1)(vi) is intended only to be an approximation, such as the month in which a test is to occur and anticipated duration, so that FRA can plan for resource needs to observe the testing, as appropriate, as the test program is executed. These dates can be modified as the test program matures, particularly if issues or delays occur. If this information is managed through a table or matrix, as suggested, it can be easily updated and provided to FRA, without modifications to the entire test plan.

Whereas proposed paragraphs (a)(1)(v) and (vi) would be used for planning purposes, the content of proposed paragraph (a)(1)(vii) is intended more for execution and recordkeeping. Proposed paragraph (a)(1)(vii) would require the railroad provide a list of all applicable test procedures and reports (including test results and post-test analysis, if required) associated with each test. Because this information may not be readily available at the time the initial plan is developed and provided to FRA, it would be acceptable if the information relevant to proposed paragraph (a)(1)(vii) is left blank until it becomes available. That is, FRA would expect the initial submission to include all information relevant to proposed paragraphs (a)(1)(v) and (vi), but except for any test procedures already developed, the information relevant to proposed paragraph (a)(1)(vii) may need to be supplied as the test program is executed. Further, because this document is intended to serve both for planning purposes and record documentation, it is understood that this would be a ''working'' document during the testing and commissioning phase.

Proposed paragraphs (a)(1)(vii)(A) through (D) of this section would provide a list of the safety-critical subjects that must be addressed in the railroad's test plan, and any relevant regulatory references. As stated previously, the railroad's test plan can include all the tests intended to be performed, or it can be focused on just those tests relevant to the regulatory requirements. Regardless of which approach is taken, those tests and documents that are intended to demonstrate compliance with one or more regulatory requirements should be clearly identified.

Proposed paragraph (a)(2) would provide the process by which a test plan required under proposed paragraph (a)(1) would be submitted. Because separate approval is necessary for high-speed operations (including testing approval), and final approval is required before Tier II and III trainsets may enter into service, FRA is proposing that pre-revenue test plans need only be submitted to FRA for review and awareness—not for approval. This would be consistent with how the process applies to Tier I passenger equipment today. FRA welcomes comments as to the necessity of this process and whether there is value in FRA explicitly approving such plans.

Proposed paragraph (a)(3) would require that test procedures included in the railroad's test plan contain at least the minimum information as further detailed in proposed appendix K to part 238.

FRA is not proposing to approve individual test procedures as recommended by the RSAC, as FRA does not see the utility in doing so. Instead, FRA is proposing that test procedures be made available to FRA upon request under proposed paragraph (a)(4). FRA believes this would have no impact on its ability to conduct audits of test procedures in advance of testing (particularly those tests that it intends to witness) and would, instead, likely remove a significant burden for both industry and FRA. Because current practice for most procurements is to have project documentation, such as test procedures, uploaded to a central, secure website where FRA and other stakeholders have access, allowing FRA to review test procedures when they become available and provide feedback as necessary would obviate the need for FRA approval.

Proposed paragraph (a)(5) would make clear that a railroad must adopt and comply with its own test procedures. Because many of the minimum requirements for procedures outlined in proposed appendix K to part 238 are intended to ensure tests are performed safely, and that records provide adequate documentation for showing compliance, tests that are not performed appropriately may necessitate re-testing.

Proposed paragraphs (a)(6) through (8) outline the process by which FRA would determine if the passenger equipment is ready to be entered into revenue service. It is based on current § 238.111(b)(4), (5), and (7). This process is intended to culminate the efforts resulting from §§ 238.110 and 238.111 and consider the railroad's and supplier's efforts in demonstrating compliance with the passenger equipment safety standards. Proposed paragraph (a)(6)(i) would require test results for Tier I equipment be made available upon request by FRA, with proposed paragraph (a)(6)(ii) requiring test results for Tier II and Tier III equipment to be submitted to FRA at least 60 days prior to the equipment being placed in revenue service. FRA notes that this timeframe may be longer or different, as appropriate, should the railroad also need to complete new passenger service pre-revenue safety demonstration under proposed § 238.108. Additionally, FRA notes that

the timeframe in this proposed paragraph is shorter than what is currently in effect under § 238.111(b)(4), and therefore invites comments on the appropriateness of the timeframe.

Proposed paragraph (a)(7) mirrors current § 238.111(b)(5) without substantive change, and FRA would accordingly rely on the substantive discussion contained in the May 1999 and November 2018 final rules.[16]

Under proposed paragraph (a)(8), explicit approval to operate in revenue service would be required for only Tier II and Tier III equipment, as currently required under § 238.111(b)(7), and FRA would also rely on the substantive discussions in the May 1999 and November 2018 final rules in this regard.[17] FRA is considering if there is value in expanding this approval to all tiers of equipment and invites comment on this question. FRA notes that this approval would not supersede any other certifications or approvals required, such as those under § 213.345 or § 238.913 for operation of the equipment on the general system, but FRA approval under this section would be required before the railroad may institute passenger service. If a railroad seeks to operate the equipment for non-testing reasons before this approval has been received (*e.g.,* demonstration runs or press events), the railroad would likewise be required to receive explicit FRA approval of such operations to ensure their safety. In this regard, the definition of ''tourist, scenic, historic, or excursion operations'' in § 238.5 makes clear that train movements of new passenger equipment for demonstration purposes are not tourist, scenic, historic, or excursion operations.[18]

Proposed paragraph (b) contains the pre-revenue testing and commissioning requirements for equipment that has been previously used within the United States. As discussed, these requirements are currently contained under § 238.111(a). The RSAC recommended that the requirements for new and previously used equipment be swapped in order to better reflect the order in which these requirements would be applied in practice, and the fact that new vehicles, by nature, have more requirements that must be met. FRA invites comment on this proposed change.

FRA is proposing to expand the requirements for vehicles that have been previously used in revenue service in the United States. Under paragraph (b)(1), the railroad would be required to verify the applicability of previous tests performed under paragraphs (a)(1)(vii)(A) through (D) of this section and perform such tests if previous test data does not exist, cannot be obtained, or does not support demonstration of safe operation within the intended operating environment. Additionally, proposed paragraph (b)(2) contains a record retention requirement, with proposed paragraph (b)(3) detailing what equipment would be considered previously used in revenue service.

Proposed paragraph (c) outlines the regulatory requirements for any modifications, major upgrades, or introduction of new technology on passenger equipment that is currently in revenue service. The proposed language establishes the scope of any pre-revenue testing, which would be expanded to include Tier I equipment, limited to only those safety-critical systems, sub-systems, or functionality that may be affected by the introduction of the changes or new technology. As always, FRA would encourage railroads and suppliers to reach out to FRA if there are any questions as to what the scope of this testing should include.

Section 238.115 Emergency Lighting

FRA is proposing to revise this section by adding new paragraph (c). Under proposed paragraph (c), FRA would include additional requirements for periodic inspection of emergency lighting systems pursuant to sec. 22406 of the IIJA. For consistency, the periodic inspection requirements for this paragraph are modeled after similar requirements for emergency windows in § 238.113. Like the requirements for emergency windows, FRA would expect the railroad to develop an inspection plan designed to capture a representative sample of the emergency lighting system designs used throughout its fleet. In this regard, cars of similar construction may still require unique sample sets, if the design and components are materially different.[19] To comply with the proposed requirement, the railroad must determine the total number of unique emergency system designs within its railcar fleet and utilize an appropriate statistical test method to determine the required sample size for each design type.

These proposed requirements, which would be in addition to the existing periodic inspection requirements specified under § 238.307(c)(5)(i), are intended to ensure that emergency lighting systems function as intended in accident scenarios, taking into consideration the operational conditions that might impact the performance of emergency lighting and associated electrical systems, particularly backup power supplies. An emergency lighting system may be compliant, by design, but fail if activated during revenue operations due to insufficient charging of the backup power supply. For example, to conserve fuel, many railroads turn off head-end power (HEP) on consists after their last revenue run. If the same consist is not provided sufficient time to charge its back-up power system before it is placed back in revenue service, the emergency lighting system may fail to meet the performance requirements of § 238.115. The railroad would be required to take into consideration these operational factors when determining an appropriate sampling method. FRA is also seeking comment on whether public address or emergency intercom systems should also have a similar testing requirement, as they are often powered by the same back-up power supply.

Section 238.131 Exterior Side Door Safety Systems—New Passenger Cars and Locomotives Used in Passenger Service

FRA is proposing to revise paragraph (a)(1) of this section, which describes certain requirements applicable to safety systems for powered exterior side doors. The proposed revisions address new door designs in high-speed trainsets, and specifically address trainsets equipped with plug-type exterior side doors that do not provide a minimum 1.5-inch gap at the leading edge of the door when the emergency release is activated. These proposed revisions would also permit a speed interlock preventing operation of the emergency release mechanism while the vehicle is moving.

For equipment with plug-type exterior side doors, the proposed revision to

[16] 64 FR 25540 and 83 FR 59182.

[17] *Id.*

[18] 67 FR 19969, 19971 (April 23, 2002) (''FRA recognizes that a train consisting of new passenger equipment that is operated for demonstration purposes is seemingly not conveying passengers to a particular destination as its principal purpose. However, the very usage of new passenger equipment, as opposed to antiquated equipment, and the clear business purposes of the train, distinguish such demonstration train operations from the class of train operations FRA intended to exclude from the requirements of the rule under § 238.3(c)(3). Any person wishing to operate such a demonstration train that does not comply with a requirement of the rule must file a request for a waiver and obtain FRA's approval on the waiver request prior to commencing the demonstration train's operation.'').

[19] For example, due to the age of a passenger car, two cars of similar design may actually utilize two very different lighting designs, particularly if one involves a third-party retrofit to replace an older system. The railroad should take this into account when designing its sampling methodology.

paragraph (a)(1) states that the requirements of section 2.9 (including section 2.9.1) of the APTA standard for the side door emergency release mechanism, identified in APTA standard PR–M–S–18–10, ''Standard for Powered Exterior Side Door System Design for New Passenger Cars,'' approved February 11, 2011, would be supplanted with three new regulatory requirements.

Proposed paragraph (a)(1)(i) describes the proposed requirements for the visual instructions, operation, and functionality of the emergency release mechanism for the plug-type exterior side door. It also proposes a requirement that some form of feedback must be provided to the passenger to alert the passenger that the emergency release mechanism has actuated. For example, a light activating over the door, or a sound played over a speaker in close proximity to the door, or a combination thereof, may satisfy the feedback requirement.

Proposed paragraph (a)(1)(ii) would establish requirements for the activation of the emergency release mechanism, specifying that activation must not require electric or pneumatic power and that access to the device not require the use of tools or other implements. This proposed paragraph also contains requirements specifying the appropriate amount of force necessary to activate interior and exterior emergency release mechanisms, along with requiring a manual resetting of the device.

Proposed paragraph (a)(1)(iii) would permit a speed interlock preventing operation of the emergency release mechanism when the vehicle is moving.

In proposing to revise paragraph (a)(1), FRA is considering further revisions regarding movements of locomotive consists within a yard, when those locomotives are not connected to passenger cars. There may be situations where traction power to the locomotives is inhibited by the door system as the door system may not be able to distinguish between the absence of passenger cars and an exterior side door being open. FRA invites comment on this issue.

Section 238.139 Vehicle/Track System Qualification

As proposed, this section would adopt the general structure of § 213.345 of this chapter, which generally provides vehicle/track qualification requirements for equipment operating on FRA track Class 6 and above (or at speeds producing high cant deficiencies), for passenger equipment operating on lower-speed track classes. Similar to § 213.345, this new section would require demonstration that the equipment can operate safely and within the vehicle/track interaction safety limits specified in § 213.333 either through dynamic testing only, or through a combination of testing and simulations. A major tenet of this proposal is to provide transferability of vehicle qualification through the use of testing and simulations so that when moving equipment from one part of a system to another, or to another railroad's system, certain testing under § 238.111 does not need to be repeated. In this regard, this proposed section would serve as an extension and clarification of pre-revenue service acceptance testing under § 238.111, helping to provide greater specificity as to the pre-revenue service acceptance testing requirements with respect to vehicle/track qualification.

FRA makes clear that the proposed requirements of this section in no way modify or supplant the testing requirements in § 213.345; § 213.345 applies on its own and must be complied with when necessary. This proposal is to be complementary to § 213.345, filling the gaps in stability testing for passenger equipment not addressed under § 213.345. Specifically, and further discussed below, this section would address gaps in testing for new equipment through Class 5 track speeds and 6 inches of cant deficiency, and for previously qualified equipment through Class 6 track speeds and 6 inches of cant deficiency by adding, as an alternative, requirements for demonstrating compliance through dynamic testing over a representative segment of the route and minimally compliant analytical track (MCAT) simulations.

As discussed elsewhere, this section presents two paths for demonstrating compliance with the safety limits of § 213.333, as part of the pre-revenue service acceptance testing process. A railroad could elect to measure carbody and truck accelerations over the entirety of the system the vehicle is intended to operate (which is what is currently required), or it could measure those same accelerations over a representative segment of the system coupled with MCAT simulations. If a railroad elects the former, the resultant qualification would be applicable only for the territory over which compliance was demonstrated. If a railroad elects the latter path, then that resultant qualification under this section would be transferable to a new territory so long it was for the same FRA track class and cant deficiency. With that said, however, should a vehicle be subject to high-speed qualification testing under § 213.345, those requirements in § 213.345 apply regardless of the path chosen under this section.

FRA invites comment whether this section should cross-reference the suspension system safety requirements in § 238.227, whether § 238.227 requires any conforming changes, or whether any other changes are necessary in establishing the requirements proposed in this new section, including changes to part 213 of this chapter. FRA also invites comment on the nature of any such changes and, as appropriate, may provide for them in the final rule.

Under paragraph (a), FRA proposes that, for qualification purposes, the safety of the equipment must be demonstrated in an overspeed condition not to exceed 5 mph above the maximum proposed operating speed as specified in paragraph (a)(1). Proposed paragraph (a)(2) would require that the testing be conducted on track meeting the track safety requirements specified under part 213 for the class of track over which the equipment would operate, with an allowance for qualification testing to be conducted at a speed greater than that specified for the class of track should the combination of the proposed maximum operating speed and overspeed testing requirement exceed the maximum authorized speed for that track class.

Paragraph (b) would address the qualification of existing vehicle types and provide that such vehicle types previously qualified or permitted to operate be considered qualified under the requirements of this section for operation at the previously operated speeds and cant deficiencies over the previously operated track segment(s). FRA makes clear that this qualification applies only for operation over the previously operated track segment(s) and does not confer transferability of such qualification. To operate such vehicle types over new routes (even at the same track speeds and cant deficiencies), the qualification requirements contained in other paragraphs of this section must be met, in addition to any other applicable testing and qualification requirements.

Proposed paragraph (c) would contain the requirements for qualifying new vehicle types (or vehicle types previously qualified according to paragraph (b) for operation over new track segments). For clarity, FRA intends that vehicles being qualified under this proposed paragraph be tested under the requirements of this section through track Class 5 speeds and 6 inches of cant deficiency in addition to any testing required under part 213 of this chapter. This means that the

graduated method of demonstrating vehicle stability would start at track Class 2 speeds and 3 inches of cant deficiency, as discussed in more detail below.

Paragraph (c)(1)(i) would describe the proposed testing procedure for new vehicle types at track Class 1 speeds. The procedure described is aligned with FRA Safety Advisory 2013–02: Low-Speed, Wheel-Climb Derailments of Passenger Equipment With ''Stiff'' Suspension Systems (Safety Advisory).[20] Compliance would be demonstrated using computer simulations with a validated numerical model of the vehicle operating over the geometry conditions specified in the Safety Advisory at track Class 1 speeds plus 5 mph in the AW0 (no ''added weight'') and AW3 (maximum passenger) loading conditions. The simulation results must show that under these conditions wheel/rail forces do not exceed the safety limits in § 213.333.

Paragraph (c)(1)(i) would also require demonstration of compliance with APTA PR–M–S–014–06, Rev. 1, ''Standard for Wheel Load Equalization of Passenger Railroad Rolling Stock,'' Authorized June 1, 2017, which is accomplished by static testing to demonstrate that wheel unloading does not exceed the limits prescribed in the standard. FRA is proposing to incorporate by reference this APTA standard into this paragraph. APTA PR–M–S–014–06 establishes static wheel load equalization requirements to provide passenger equipment with the wheel unloading characteristics necessary to reduce the risk of low-speed wheel climb derailments. It also provides the test conditions, equipment, and procedures necessary to demonstrate compliance with the enumerated static wheel load equalization requirements. APTA PR–M–S–014–06 is reasonably available to all interested parties online at *www.apta.com.* Additionally, FRA will maintain a copy available for review.

FRA notes that APTA recently came out with a standard for evaluating low-speed vehicle curving performance of railroad passenger equipment, APTA PR–M–S–031–22, which follows the intent of FRA's Safety Advisory and provides additional detail on conducting simulations to evaluate curving performance. FRA therefore invites comment whether the final rule should reference APTA standard PR–M–S–031–22 in this section and on the effect it should be given.

Proposed paragraph (c)(1)(ii) specifies the testing necessary to demonstrate compliance with the safety limits in § 213.333 at speeds from track Classes 2 through 5 and up to 6 inches of cant deficiency. In order to be qualified under this section, a railroad must perform simulations, as specified in proposed paragraph (c)(2), in addition to the carbody and truck acceleration measurements under proposed paragraphs (c)(3) and (4) respectively. The results of simulations and dynamic testing must demonstrate that the safety limits in § 213.333 are not exceeded. This proposed paragraph would also provide a mechanism for transferability of the qualification under this proposed section to allow operation of previously qualified vehicles over new track segments at the same class of track and cant deficiency. This proposed paragraph would not provide transferability of any qualification conferred under § 213.345, however.

Again, FRA makes clear that the requirements of this section are intended to be complementary to those requirements found under § 213.345. FRA recognizes that in some scenarios, there may be overlap between the requirement proposed under this section and those under § 213.345. For example, when attempting to qualify a new vehicle type for operation at Class 4 track speeds, where up to 6 inches of cant deficiency would be produced, § 213.345 would require the use of carbody accelerometers and the performance of a lean test. As proposed, when attempting to qualify the same new vehicle type for the same service, this proposed section would also require the use of carbody accelerometers, in addition to truck accelerometers and MCAT simulations. So, while there may be overlap in certain requirements between these proposed requirements and existing requirements under part 213 (such as the use of carbody accelerometers), FRA views any as harmonious. The new vehicle type being qualified in this scenario would be subject to the following requirements: a lean test, the use of carbody and truck accelerometers, and MCAT simulations, with the testing and simulations starting at Class 2 track speeds and 3 inches of cant deficiency. FRA does invite comment, however, on whether there are any possible scenarios where there could be a conflict.

Paragraph (c)(2) describes the analysis procedure that is to be performed using an industry-recognized methodology. The analysis considers the vehicle under evaluation operating on analytically defined track segments representing minimally compliant track conditions as defined in appendix C to this part, and a track segment representative of the route over which the vehicle is to operate. These requirements are reflective of similar requirements in § 213.345 for track Class 6 and greater, but do not replace the testing and analysis required under § 213.345. This paragraph also requires a linear system analysis to identify the frequency and damping of the truck hunting modes. Damping of these modes must be at least 5%, up to the maximum intended operating speed + 5 mph considering equivalent conicities starting at 0.1 up to 0.6. The conicities range proposed is based on conicities prevalent on the Northeast Corridor. FRA invites comments on whether this proposed range is appropriate.

Proposed paragraphs (c)(3) and (4) would require representative route testing for all operations at track Class 2 through 5 speeds and up to 6 inches of cant deficiency. Testing shall include measurements of carbody lateral and vertical accelerations and truck lateral accelerations that must not exceed the safety limits specified in § 213.333.

In paragraph (d), FRA proposes to separate and explicitly define the qualification requirements for vehicle types previously qualified by simulation and testing under paragraph (c) of this section intended to operate on new track segments as defined in paragraphs (d)(1) through (3). FRA notes simulations are especially useful for demonstrating that, when qualified vehicles are intended to operate on a new route, the new vehicle/track system is adequately examined for deficiencies prior to revenue service operation.

Paragraph (d)(1) addresses vehicle types previously qualified in accordance with paragraph (c). These vehicles may be operated on other routes with the same track class designation and at the same or lower cant deficiency without additional testing, simulations, or FRA approval.

For vehicle types operating at speeds not to exceed Class 6 track speeds or at curving speeds producing greater than 5 inches of cant deficiency, but not exceeding 6 inches, paragraph (d)(2) would require that qualification testing on a representative segment of the new route be performed to demonstrate that the carbody lateral and vertical acceleration limits in § 213.333 are respected.

Proposed paragraph (d)(3) would require vehicle types that are previously qualified by testing alone to be subject to the requirements of paragraph (c) for new equipment.

Paragraph (e) would provide requirements for the content of the qualification testing plan, which would

[20] 50 FR 16358 (Mar. 14, 2013).

be submitted to FRA's Associate Administrator at least 60 days prior to conducting the testing. This 60-day period is to allow FRA sufficient time to review and approve the plan, and to seek clarification from the submitter as necessary. In some cases, the review and approval may be able to be accomplished in less than 60 days; in other cases, the process may take longer, especially if the plan is incomplete or if questions are raised. FRA is mindful of the concern that FRA not unduly delay testing, and at the same time recognizes that safety is better and more efficiently served by identifying potential safety issues early in the qualification process. FRA therefore encourages those planning to conduct qualification testing to approach FRA prior to the submission of their test plans should they have any questions or concerns about the testing and approval process.

As proposed, the test program would establish a program of tests that permit identification of the operating limits of the vehicle/track system and would include, as identified in the following proposed paragraphs: under (e)(1), a description of the representative segment of the route over which the vehicle is intended to be operated; under (e)(2), consideration of the operating environment during qualification testing, including operating practices and conditions, the signal system, highway-rail grade crossings, and trains on adjacent tracks; under (e)(3), identification of the maximum angle found on the gage face of the designed (newly profiled) wheel flange referenced to the axis of the wheelset (the wheel flange angle would be used to determine the Single Wheel L/V Ratio safety limit specified in § 213.333); under (e)(4), identification of the target maximum testing speed in accordance with paragraph (a) of this section and the maximum testing cant deficiency; and under (e)(5), the results of vehicle/track performance simulations required by this section.

Proposed paragraph (f) would contain the requirements for conducting the two-stage qualification testing upon FRA approval of the qualification test plan. The two-stage testing approach permits assessment of safe vehicle operation on tangent and curved track segments individually as the test speed is incrementally increased.

Stage-one testing, proposed under paragraph (f)(1), would require that for testing on tangent track (proposed under paragraph (f)(1)(i)), test speed is incrementally increased from maximum speeds corresponding to each track class to the target maximum test speed. Under paragraph (f)(1)(ii), testing speeds for curved track would start at that speed necessary to produce 3 inches of cant deficiency and would be incrementally increased until the maximum testing cant deficiency is achieved. The target maximum test speed and maximum testing cant deficiency are specified in the test plan. Incrementally increasing the testing speed would allow for assessment of the dynamic response of the vehicle with respect to the vehicle/track interaction safety limits specified in § 213.333 of this chapter and establish the maximum safe speed and cant deficiency.

Under paragraph (f)(2), FRA proposes requirements for stage-two testing of the vehicle over the representative segment of the route. As proposed, stage-two testing can begin only when stage-one testing has successfully demonstrated a maximum safe operating speed and cant deficiency. Under these proposed requirements, two round-trips over the representative segment of the route are required: the first is at the speed for which the railroad is seeking FRA approval for service (which may be limited by the results of stage-one testing); the second is performed at 5 mph above this speed. The orientation of the equipment (in the direction of travel) is to be reversed for each leg of the round-trip.

Under proposed paragraph (f)(3), if during stage-one and -two testing, any of the monitored safety limits are exceeded on any segment of track, testing may continue provided that the track location(s) where any of the limits are exceeded be identified and test speeds be limited at the track location(s) until corrective action is taken. Corrective action may include making an adjustment in the track, in the vehicle, or in both of these system components.

Proposed paragraph (f)(4) would require that Track Geometry Measurement System (TGMS) equipment be operated over the intended test route (the representative segment of the route) within 30 days prior to the start of the testing, to help ensure the integrity of the test results.

Proposed paragraph (g) would contain the requirements for reporting to FRA's Associate Administrator the results of the qualification testing program. The qualification test report must include all results obtained during the qualification test program. When simulations comprise a portion of the report, comparisons of the simulated accelerations to those measured during the testing must be submitted to demonstrate model validation. For purposes of model validation, the report should also include comparisons that demonstrate the accuracy of the model under various conditions, specifically: predicting the transfer of wheel loads when a vehicle is unbalanced, the transfer of wheel loads when the primary suspension is deflected to simulate twist or warp, and the frequency and damping ratio associated with dominant vehicle modes. FRA invites comment whether FRA should make these expectations explicit in the regulatory text for MCAT model validation under this part, and potentially under part 213 of this chapter as well. The qualification test report must be submitted no less than 60 days from the date the railroad intends to operate the equipment in revenue service.

Under paragraph (h)(1), FRA proposes to approve a maximum train speed and value of cant deficiency for revenue service, based on the test results and all other required submissions. FRA intends to provide an approval decision normally within 45 days of receipt of all the required information in the form of the qualification test report. FRA may impose conditions, as necessary, to help ensure safe operations at the maximum train speed and value of cant deficiency approved for revenue service.

Proposed paragraph (h)(2) would consider vehicle types previously qualified in accordance with paragraph (c) of this section for operations at Class 2 through 5 speeds, or at curving speeds producing up to 6 inches of cant deficiency, on one route to be approved for operation on another route at the same maximum speed and cant deficiency.

Proposed paragraph (i) makes clear that the documents required by this section must be provided to FRA by either: (1) the track owner; or (2) a railroad that provides service with the same vehicle type over trackage of one or more track owner(s), with the written consent of each affected track owner. For example, Amtrak is a railroad that provides passenger service over trackage often owned by other entities, usually freight railroads. Under this example, Amtrak would need the consent of the freight railroad (the affected track owner) to conduct the testing. This is to ensure that the track owner is fully apprised as to the status of the track owner's track in case any anomalies during testing should arise. In another example, Amtrak is also a track owner over whose trackage numerous passenger railroads operate, such as the Southeastern Pennsylvania Transportation Authority (SEPTA) and New Jersey Transit (NJT); under this scenario, Amtrak, as the track owner, would not need the consent of these railroads, but these railroads would

need Amtrak's consent when seeking vehicle/track system qualification under this section.

Section 238.201 Scope/Alternative Compliance

FRA is proposing to revise paragraph (a)(1) of this section to harmonize the language with other changes being proposed to part 238. Specifically, FRA would harmonize the language referencing the Safety Appliance Act (49 U.S.C. ch. 203) in an effort to make clear that Tier I equipment may follow either the current, legacy safety appliance requirements (49 CFR part 231, and §§ 238.229 and 238.230), or the proposed requirements under § 238.791. So, while the requirements of the Safety Appliance Act would continue to remain applicable, other means would be provided for complying with those statutory requirements.

Additionally, FRA proposes to correct a typographical error. Currently, this paragraph references § 232.2, which does not exist. FRA would correct that reference instead to § 232.3, the applicability section of part 232.

Section 238.230 Safety Appliances—New Equipment

FRA proposes to amend paragraph (a) of this section to clarify that a Tier I alternative passenger trainset that complies with the requirements of proposed § 238.791 is not subject to the requirements of this section.

Section 238.235 Safety Appliances for Non-Passenger Carrying Locomotives Used in Passenger Service

FRA is proposing to revise this section to identify the design standards for safety appliances on non-passenger carrying locomotives used in passenger service, in an effort to provide clarity and to remove the need for interpretation for the various requirements contained in 49 CFR part 231. Specifically, paragraph (a) proposes to clarify that these requirements are intended to apply to locomotives used in passenger service that utilize monocoque, semi-monocoque, or carbody construction common to most passenger road locomotives. FRA is inviting comment on this paragraph generally and, in particular, whether specific implementation dates are necessary (and, if so, what the implementation dates should be).

Because many of these proposed requirements were developed when the PSWG developed the safety appliances standards for Tier III trainsets (contained in proposed § 238.791), there is considerable overlap between the proposed requirements. Accordingly, FRA references proposed § 238.791 when provisions under this section are identical to those under § 238.791. In such situations, FRA relies on the analysis provided under § 238.791, rather than repeat it here.

Proposed paragraphs (b) through (e) of this section address attachment, fatigue life, handholds, and sill steps. The requirements proposed under each of these paragraphs are identical to the requirements under proposed § 238.791(b) through (e).

Proposed paragraph (f) contains the requirements for ground level access to (or egress to ground level from) the locomotive cab and other carbody side doors on a non-passenger carrying locomotive. This proposed paragraph contains the general requirement that exterior side locomotive cab access doors and other carbody side doors be equipped with appropriate safety appliances to permit safe access to the locomotive cab by employees and other authorized personnel from ground level. Because many passenger road locomotives do not utilize switching steps and platforms with external walkways, access to the locomotive cab or other compartments, or the locomotive's B end, is usually provided by an external door accompanied with a ladder and handhold arrangement. Accordingly, this proposed paragraph would provide the requirements for how such arrangements should be applied properly, based on the governing elements of part 231 and contemporary practice on diesel-electric and electric locomotives.

Proposed paragraph (f)(1) would provide the requirements for the number, location, dimension, and clearance for handholds at each ground level access location to the locomotive cab and other carbody side doors on a non-passenger carrying locomotive. These requirements would mirror similar provisions under proposed § 238.791(f). Additionally, proposed paragraph (f)(2) would make the requirements of proposed § 238.791(e)(2) and (3) applicable to steps at each of these locations.

Under proposed paragraph (g), concerning couplers on non-passenger carrying locomotives, FRA would make the coupler requirements of § 238.791(g) applicable to these locomotives.

Proposed paragraph (h) would provide requirements for uncoupling levers. As these requirements would very closely mirror similar requirements under proposed § 238.791(h), FRA relies on the same, supporting analysis. However, there is a notable difference between the two sections that should be highlighted. If a non-passenger carrying locomotive is equipped with a manual uncoupling lever, that lever must be operative from both sides of the locomotive, rather than just the left side of the equipment as proposed under § 238.791(h).

Proposed paragraph (i) would permit the coupler, end handholds, and uncoupling mechanism on the leading and trailing ends of a non-passenger carrying locomotive to be stored within a removable shroud to reduce aerodynamic effects. This mirrors the same requirement proposed under § 238.791(i).

Proposed paragraph (j) contains the requirement for a non-passenger carrying locomotive to be equipped with an efficient hand brake. This proposed paragraph also includes the term ''parking'' brake, acknowledging the brake's primary role on a locomotive as a device used to hold a locomotive or train at a static location, as opposed to a means to brake (slow or stop) the train, as applied to railcars before the wide adoption of pneumatic braking systems. In this respect, the proposed performance requirement based on a 3 percent grade, or the railroad's maximum grade (if greater), was also added to reflect common practice. This proposed requirement would mirror § 238.791(j).

Proposed paragraph (k)(1) provides for the arrangement of safety appliances on non-passenger carrying locomotives to facilitate certain maintenance tasks. Should a locomotive be equipped with appurtenances such as headlights, windshield wipers, marker lights, and other similar items required for the safe operation of the locomotive that are designed to be maintained or replaced from the exterior of the locomotive, then the locomotive must be equipped with handholds and steps meeting the requirements of this section to allow for the safe maintenance and replacement of these appurtenances. However, under proposed paragraph (k)(2), the requirements under proposed paragraph (k)(1) would not apply if railroad operating rules require, and actual practice entails, the maintenance and replacement of these components by maintenance personnel in locations that are protected by the requirements of subpart B of part 218 of this chapter and equipped with ladders and other tools to safely repair or maintain those appurtenances. The requirements of this proposed paragraph (k) mirror similar requirements proposed under § 238.791(k).

Paragraph (l) would require that any safety appliances installed at the option of the railroad must be approved pursuant to § 238.110.

Subpart H—Specific Requirements for Tier III Passenger Equipment

Section 238.701 Scope

This subpart contains requirements for railroad passenger equipment operating in a shared right-of-way at speeds not exceeding 125 mph and in an exclusive right-of-way without grade crossings at speeds exceeding 125 mph but not exceeding 220 mph. FRA proposes to revise the scope of this subpart by adding a reference to proposed § 238.110, to help clarify the compliance demonstration and approval process for this Tier III passenger equipment. FRA is also proposing to remove the undesignated center headings in this subpart (''Trainset Structure,'' ''Glazing,'' ''Brake System,'' ''Interior Fittings and Surfaces,'' ''Emergency Systems,'' and ''Cab Equipment'') to accommodate proposed additions and other changes.

Section 238.719 Trucks and Suspension

In this section, FRA proposes safety performance standards for Tier III suspension systems. These performance standards would require a suspension system design that reasonably prevents wheel climb, wheel unloading, rail rollover, rail shift, and vehicle overturn to ensure safe, stable performance and ride quality. The proposed requirements are consistent with the general standards for high-speed trainsets adopted by the railroad industry and regulatory bodies around the world, and the overall approach is based on the suspension system safety provisions in existing §§ 238.227 and 238.427.

Proposed paragraph (a)(1) would explain the general requirements applicable to Tier III trucks and suspension systems and describe the different track conditions and characteristics that must be taken into account when determining compliance with these requirements. Proposed paragraph (a)(2) would clarify the applicability of part 213 to Tier III trucks and suspension systems subject to this section, both while in general operation and during the pre-revenue service qualification and revenue service operation stages of operations.

Paragraph (b) would prohibit Tier III trainsets from operating under conditions that result in a steady-state lateral acceleration greater than 0.15g, as measured parallel to the car floor inside the passenger compartment. This paragraph would also require that Tier III trainsets comply with the carbody acceleration limits specified in § 213.333.

Paragraph (c) describes the proposed lateral acceleration performance standards, with specific reference to the appropriate train monitoring system response to the detection of truck hunting and explains that compliance with this paragraph would be subject to the limits defined in § 213.333.

Paragraph (d) proposes limits for wheelsets based on the distances between wheel flanges. Notably, paragraph (d)(3) proposes that the back-to-back distance between flanges of two wheels on the same axle not vary more than ¼ inch when measured at similar points on each wheel. The back-to-back distance is measured from the inside face of the wheel (the portion of the wheel facing the inside gage of the track) to the inside face of the other wheel. As proposed, the measurements from a point on the flange of one wheel to the same point on the opposite wheel's flange may not be more than ¼ inch when multiple measurements are taken around the circumference of the wheel at the flange location. When this is done, care should be taken to ensure that the measurement points are the same distance from a common, non-deformable reference point for consistency and accuracy of measurement.

FRA invites comments on this proposed section, including comment specifically on the appropriate track conditions and characteristics to be included in determining compliance with this section.

Section 238.723 Pilots, Snowplows, and End Plates

Under this section, FRA proposes requirements for pilots, snowplows, and end plates on passenger equipment, which aim to serve the same purposes as § 229.123 of this chapter, with slight modifications to address the unique characteristics of Tier III passenger equipment and operations. The most significant difference between the proposed requirements for pilots, snowplows, and end plates on Tier III passenger equipment and similar requirements in § 229.123 would be the increase in the maximum clearance from six inches to nine inches for a lead vehicle equipped with an obstacle deflector or truck (bogie)-mounted wheel guard. FRA is proposing this modification based on industry input to address the greater vertical movement of the lead vehicle during higher-speed passenger operations.

Section 238.725 Overheat Sensors

Proposed section 238.725 would make applicable to Tier III trainsets the same minimum requirements for the use and placement of overheat sensors currently applicable to Tier II trainsets under § 238.428. Section 238.428 requires overheat sensors for each Tier II equipment wheelset journal bearing, placed either onboard the equipment or at reasonable intervals along the railroad's right-of-way. FRA invites comment on this proposed application to Tier III trainsets to monitor wheelset journal overheating.

Section 238.745 Emergency Communication

FRA is proposing to add this section to address communication systems, to provide requirements for public address (PA) and intercom systems for Tier III trainsets. By adding these requirements, which FRA had intended to include in the 2018 final rule, FRA would harmonize the emergency communication requirements for Tier III trainsets with similar emergency system requirements (*i.e.,* emergency lighting) already established.

With one exception, the proposed emergency communication requirements for Tier III trainsets would be the same as the existing emergency communication requirements in § 238.121 for passenger trainsets, as stated in proposed paragraph (a). The exception would be for emergency communication back-up power systems, permitting alternative crash loadings instead of those required in § 238.121(c)(2). This proposed exception is detailed in paragraph (b), under which a railroad may seek to use the loading requirements defined in Section 6.1.4, ''Security of furniture, equipment and features,'' of Railway Group Standard GM/RT2100, Issue Four, ''Requirements for Rail Vehicle Structures,'' Rail Safety and Standards Board Ltd., December 2010, which FRA proposes to incorporate by reference in this paragraph. In particular, these loading requirements are the same as those for alternatively demonstrating adequate attachment strength of emergency lighting back-up power systems in Tier III trainsets discussed in the 2016 NPRM and 2018 final rule under § 238.743.[21] Accordingly, both the interior lighting fixtures and their emergency back-up power systems would be subject to the same alternative loading requirements. As in § 238.743, use of the alternative loading requirements would be carried out consistent with any conditions identified by the railroad, as approved by FRA.

[21] 81 FR 88006 (Dec. 6, 2016); 83 FR 59182 (Nov. 21, 2018).

Section 6.1.4 contains requirements for securement of furniture, on-board equipment, and other trainset features to help mitigate against injuries to passengers and crew from secondary impacts within the occupied volume. GM/RT2100 is available to all interested parties online at *www.rgsonline.co.uk/Railway_Group_Standards*. Additionally, FRA would maintain a copy available for review.

Section 238.747 Emergency Roof Access

In this section, FRA proposes requirements for emergency roof access to the cabs of Tier III trainsets. These requirements aim to ensure that the trainset design allows for proper roof access for rescue access purposes for cab occupants in Tier III trainsets. This emergency roof access point would be required only if trainset design does not allow cab occupants access to emergency roof access locations otherwise required in the passenger compartment of the trainset. The proposed requirements would also define the dimensions for the emergency roof access location while making specifically applicable paragraphs (b), (d), and (e) of § 238.123 (Emergency roof access).

Should train crewmembers occupying the Tier III cab have ready access to emergency roof access locations in the passenger compartment that comply with § 238.123, then the railroad would not need to comply with the requirements of this section, as the intent of the requirement (access to the roof of the trainset for cab occupants in emergency situations to facilitate rescue access) would be fulfilled. FRA also clarifies that the location of the emergency roof access point under this proposed section would not need to be directly over or into the cab, and could be a location behind the cab, so long as cab occupants have access.

Section 238.755 General Safety Requirements

Proposed § 238.755 is based on existing §§ 229.13, 229.41, and 229.45. Specifically, proposed paragraph (a) would cross-reference the requirements of § 229.41 for protection from personal injury. Proposed paragraph (b) would cross-reference the requirements of § 229.45, requiring that a Tier III trainset be free from conditions that would endanger the safety of the passengers, crew, or equipment. Moreover, FRA makes clear that it does not intend for this provision to be limited to the list of conditions identified under § 229.45. FRA would view other conditions not listed but still endangering the safety of passengers, crew, or equipment to be covered by this provision. Proposed paragraph (c) would make applicable the requirements of § 229.13 when multiple Tier III trainsets are coupled in remote- or multiple-control. FRA reiterates that although the term ''locomotive'' is used under § 229.13, the substantive requirements of this proposed paragraph are intended to be applied to Tier III trainsets, and thus should be read as such.

Section 238.757 Cab, Floors, and Passageways

Under § 238.757, FRA is proposing requirements for Tier III trainset cabs, floors, and passageways, and is basing these proposed requirements on § 229.119. Proposed paragraph (a), based on § 229.119(a) and (i), contains the requirements for Tier III trainset cab doors. This paragraph proposes that such trainset cab doors be equipped with a secure and operable device to lock the doors from both the inside and outside without impeding egress from the cab.

Proposed paragraph (b), based on § 229.119(b), would require that Tier III end-facing windows located in the leading end of the trainset be free of cracks, breaks, or other conditions that obscure the view of the right-of-way for the crew from their normal positions in the operating cab.

Proposed paragraph (c) would make applicable to Tier III trainsets the requirements of § 229.119(c).

Proposed paragraph (d), based on § 229.119(g) and (h), would require that cabs of Tier III trainsets shall be climate-controlled, providing both appropriate heating and air conditioning. This proposed paragraph also states that the inspection, testing, and maintenance requirements for the heating and air condition system be specified in the railroad's ITM program.

Section 238.759 Trainset Cab Noise

Under § 238.759, FRA is proposing requirements to address trainset cab noise, which are based on § 229.121. Proposed paragraph (a), based on § 229.121(a), would establish a maximum noise threshold that occupants of a Tier III trainset may be subjected to (85 A-weighted decibels (85 db(A))); prohibit railroads from modifying the cab in a manner that would cause the noise to exceed the maximum level; and require railroads to follow the testing protocols, outlined under proposed appendix I to part 238 (discussed further, below), to verify that the noise levels within the cab do not exceed the maximum level. Proposed paragraph (b) would contain the requirements addressing excessive noise reports. This paragraph is based on § 229.121(b) with minor editorial changes.

Section 238.761 Trainset Sanitation Facilities for Employees

Under § 238.761, FRA is proposing a set of requirements addressing crewmember sanitation facilities, which are based on § 229.137. Proposed paragraph (a) would require that if a railroad provides a crewmember sanitation compartment, as that term is defined under § 229.5, accessible only to the crew onboard a Tier III trainset, that compartment must meet the requirements of § 229.137 and be maintained in accordance with § 229.139. However, under proposed paragraph (b), should a railroad not provide such a sanitation compartment exclusively for crewmembers on board its trainset, the railroad would be required to provide access to sanitation facilities in accordance with § 229.137(b)(1)(i) in that employees should have ready access to railroad-provided sanitation facilities external to the trainset or sanitation facilities elsewhere on the trainset.

Again, FRA reiterates that although the term ''locomotive'' is used under § 229.137, the substantive requirements of this proposed paragraph are intended to be applied to Tier III trainsets, and thus should be read as such.

Section 238.763 Speed Indicator

Under § 238.763, FRA is proposing requirements addressing speed indicators for Tier III trainsets. Although these requirements are based on § 229.117, the requirements for speed indicators being proposed mark a significant departure from the traditional requirements under part 229. Proposed paragraph (a) provides that all Tier III trainsets be equipped with speed indicators, clearly readable for the engineer's normal position. Notably, the accuracy requirements under proposed paragraph (a)(1) would represent the biggest modification of the speed indicator requirements. Under this proposal, a Tier III speed indicator would be required to be accurate to within plus or minus 1.24 mph for speeds not exceeding 18.6 mph.[22] However, the accuracy would be permitted to deviate, linearly, up to plus or minus 5 mph for speeds not exceeding 220 mph. So, rather than specifying static accuracy based on whether one is above or below a certain speed, FRA would permit use of a

[22] These values are intended to correspond to 2 kilometers per hour (kph) and 30 kph.

sliding scale performance requirement. Under this proposal, accuracy of the speed indicator would be permitted to change in a linear relationship to the speed of the trainset. And, as the necessity for more precise accuracy diminishes the faster a Tier III trainset operates,[23] this requirement is reflective of the actual Tier III operating environment. Additionally, with the advances in digital technology, maintaining such an accuracy should not be as challenging.

Proposed paragraph (b) would require that the speed indicator output (what the engineer sees) be based on a system of independent, onboard speed measurement sources to comply with the accuracy requirements of proposed paragraph (a). At a minimum, FRA would expect that, from whatever source the speed is derived, there would be multiple (at least two) inputs provided by different sensors to ensure the accuracy of the speed as displayed to the engineer.

Proposed paragraph (c) permits the railroad to define the calibration frequency for the speed indicator in its ITM program.

Section 238.765 Event Recorders

Under this section, FRA is proposing a set of requirements addressing event recorders for Tier III trainsets. The requirements, as proposed, largely follow the event recorder requirements under § 229.135. However, FRA has made some changes to account for the different technology. Notably, under proposed paragraph (a), which would contain the general requirement that all Tier III trainsets be equipped with an in-service event recorder and is based on § 229.135(a), FRA would not require railroads to note the mere presence of an event recorder on FORM FRA F6180–49A or other record, as all Tier III trainsets would require event recorders.

Proposed paragraph (b) contains the specific data elements to be recorded by the event recorder and the level of recording accuracy necessary. Notably, proposed paragraph (b)(2) outlines the data elements to be recorded. This paragraph would cross-reference a large majority of data elements contained in § 229.135(b)(4), specifically, § 229.135(b)(4)(i) through (xv), (xvii), (xx) and (xxi). In addition, proposed paragraph (b)(2) lists several more data elements that are tailored toward Tier III trainsets, such as: the application and operation of the eddy current brake, if equipped ((b)(2)(i)); a passenger brake alarm request ((b)(2)(ii)); a passenger brake alarm override ((b)(2)(iii)); the activation of the bell ((b)(2)(iv)); and the trainset brake cylinder pressures ((b)(2)(v)). Finally, proposed paragraph (b)(2) would require the recorded data to be retained on a certified crashworthy event recorder memory module that meets the requirements of appendix D to part 229 of this chapter.

Proposed paragraph (c), which is based on § 229.135(c), would require that when an in-service event recorder is taken out of service, the date the device was removed from service would be annotated in the trainset's maintenance records, required in accordance with proposed § 238.777.

Proposed paragraph (d), which is based on § 229.135(d), would permit a Tier III trainset on which the event recorder has been taken out of service to continue in service only until the next pre-service inspection, as required by the railroad's ITM program under proposed § 238.903(c)(2).

Proposed paragraph (e) would make applicable to Tier III trainsets the requirements set forth in § 229.135(e) through (g).

Proposed paragraph (f) would require that event recorders be tested at intervals not to exceed 368 days, in accordance with § 229.27(c).

FRA again reiterates that although the term ''locomotive'' is used under § 229.135, the substantive requirements of this proposed paragraph are intended to be applied to Tier III trainsets, and thus should be read as such.

Section 238.767 Headlights

Under this section, FRA is proposing requirements for Tier III trainset headlights. As proposed under paragraph (a), each end of a Tier III trainset would be required to be equipped with a headlight comprised of at least two lamps that meets the angular, intensity, and illumination requirements of § 229.125(a).

Proposed paragraph (b) would prohibit Tier III trainsets from operating with a leading end in revenue service if a defective headlight is discovered during the pre-service inspection; under such circumstances, it would only be allowed to move in accordance with the requirements covering the movement of defective equipment under proposed § 238.1003(e). However, this proposed paragraph would permit continued operation of a trainset's leading end with a defective headlight if the defect is discovered while the trainset is in service in accordance with the requirements of proposed § 238.1003(b)(1) through (3).

Proposed paragraph (c) would permit the headlights of a Tier III trainset to be dimmed, which is consistent with existing § 229.125(c). However, because the headlight and auxiliary light standards are driven around the need for consistency and conspicuity when Tier III trainsets are used on a shared right-of-way, the performance requirements, themselves, would not directly address that it may be advantageous for a Tier III trainset to operate for extended periods of time with a lower candela setting. Specifically, whereas a conventional freight or passenger operation is likely to utilize the dim setting only when passing another train, idling, or as an alternative to marker lights, a Tier III trainset could operate for extended periods of time within a dedicated (and more protected) environment where the higher output may not be necessary or desired, particularly if the Tier III right-of-way is adjacent to or within a highway corridor. The use of this functionality, however, should be described by the railroad under proposed § 238.110(d)(2)(xv).

Proposed paragraph (d) would provide an allowance to use alternative lighting technology (*e.g.,* LED versus incandescent). It also would provide an exception to the requirement that the headlight consist of at least two lamps, as required by proposed paragraph (a). Further, this proposed paragraph (d) would require that if such alternative technology is used, then the railroad's ITM program plan must include procedures for determining that such headlights provide the illumination intensity required by proposed paragraph (a), and that the headlights can achieve the minimum illumination intensity under snow and ice conditions (*i.e.,* when there is a risk of snow and ice accumulation on the headlight).

Section 238.769 Auxiliary Lights

Under this section, FRA is proposing requirements addressing auxiliary lights for Tier III trainsets, based on similar requirements in § 229.125. Under proposed paragraph (a), FRA would establish the general requirement that Tier III trainsets operating in shared rights-of-way over public highway-rail grade crossings at speeds 20 mph or greater be equipped with auxiliary lights that conform to § 229.125(d)(1) though (3). FRA recognizes that § 229.125(d)(1) through (3) uses some traditional terms, such as ''locomotive,'' when describing the placement of auxiliary lights; however, the use of the term ''locomotive,'' or other similar terms, should not be an impediment to

[23] For example, a change in speed of 2 mph while operating at 220 mph is not as significant as an equivalent change in speed at 20 mph.

compliance with the requirements of this proposed paragraph.

Proposed paragraph (b) would permit auxiliary lights to be arranged in any manner specified in § 229.125(e)(1) through (2), and proposed paragraph (c) would require compliance with § 229.125(f).

Proposed paragraphs (d)(1) through (3) address requirements concerning defective auxiliary lights, and would require that a lead unit with a single defective auxiliary light be switched to a trailing position (or repaired) if discovered during the pre-service inspection. Although the proposal would permit a unit to continue in the lead position if a single defective auxiliary light is discovered while in service, a lead unit discovered with two defective auxiliary lights while in service would be allowed to continue in service only to the next forward location where repairs could be made.

Section 238.771 Marking Device

This section proposes a set of requirements for rear marker devices for Tier III trainsets, based generally on part 221. Proposed paragraph (a) contains the general requirement that Tier III trainsets be equipped with a rear marking device. Paragraph (a) would also require marking devices to conform with the characteristics of § 221.14(a)(1) through (a)(3), along with other requirements in proposed paragraphs (a)(1) and)(2) of this section.

Proposed paragraph (a)(1) would require that marking devices continuously illuminate, with proposed paragraph (a)(2) permitting alternative lighting technology so long as the railroad's ITM program plan contains procedures for determining that the marker lights conform with the requirements of proposed paragraphs (a) and (a)(1).

Proposed paragraph (b) specifies that the centroid of the marking device would be located 48 inches above the top of the rail.

Proposed paragraph (c) would require that marking devices be illuminated while the trainset is in service and that they be inspected as part of the pre-service inspection.

Proposed paragraph (d)(1) would specify that a trainset with a defective or inoperative marking device not be moved in revenue service if discovered as part of a pre-service inspection. However, proposed paragraph (d)(2) would permit movement to the next forward repair location if the marking device is discovered inoperative while the trainset in service.

Proposed paragraph (e) would provide an exception to equipping trainsets with a marking device in conformance with paragraph (a) by allowing a headlight set on dim to serve as a rear marking device.

Section 238.773 Cab Lights

This proposed section would require that cab lights comply with the requirements of § 229.127(a). It also would require that cab passageways and compartments be adequately illuminated.

FRA reiterates that although the term ''locomotive'' is used under § 229.127, the substantive requirements of this proposed section are intended to be applied to Tier III trainsets, and thus should be read as such.

Section 238.775 Trainset Horn

Proposed paragraph (a) would require that each Tier III trainset be equipped and arranged with a horn that conforms with § 229.129(a).

Proposed paragraph (b) provides an option for testing the trainset horn. Railroads would be able either to perform acceptance sampling in accordance with § 229.129(b)(1) or test each horn individually under the procedures of proposed paragraph (e).

Proposed paragraph (c) would require that, but for the exception under proposed paragraph (d), replacement trainset horns be tested individually in accordance with proposed paragraph (e). Under proposed paragraph (d), replacement trainset horns need not be tested if the replacement horn is of the same model of horn being replaced that had been successfully tested either in accordance with § 229.129(b)(1) or proposed paragraph (e).

Proposed paragraph (e) would require that trainset horns be individually tested in accordance with § 229.129(c), subject to one exception and one addition. The positioning of the microphone used for testing the trainset horn would be specified under proposed paragraph (e)(1), in lieu of complying with § 229.129(c)(7). Additionally, proposed paragraph (e)(2) would permit the records required under § 229.129(c)(10) to be kept electronically.

Although § 229.129 references the term ''locomotive,'' this should not prove an impediment to compliance, as substantive requirements of this proposed section are intended to be applied to Tier III trainsets.

Section 238.777 Inspection Records

This proposed section is generally based on § 229.23 insofar as certain periodic inspections must be performed at certain intervals and completion thereof must be recorded. In addition, and as discussed further below, certain other pertinent information must also be recorded and made available to railroad employees and FRA inspectors.

The most significant aspect of this proposed section is that FRA is not requiring use of FRA form F6180–49A (form 49A), or any future variants, to record the pertinent inspection data and other data that FRA necessitates under part 229 (such as the presence of an in-service event recorder in the remarks section of the form). FRA would permit users of Tier III equipment the option of using onboard technology to provide to the engineer the same type of information regarding the inspection state of the Tier III trainset as would be provided through use of form 49A under part 229 and its physical presence in the cab of a locomotive. As discussed below, should a railroad using Tier III equipment wish to use this option, the onboard technology would need to have the capability of informing the engineer that, at the time of use, the trainset has received all required periodic inspections. The technology would also need to be able to communicate the type of brake system used, and various other pieces of necessary information. On the other hand, should a railroad using Tier III equipment not elect this option, the railroad may still use a physical form under a transparent cover in the controlling cab of the Tier III trainset. Although a railroad would not be required to use form 49A for Tier III equipment specifically, this proposed paragraph should not be construed as absolving a railroad using Tier III equipment from complying with the applicable requirements for Tier I or II equipment it may also operate. For clarity, the periodic inspection information intended to be captured under this proposed section would be analogous to the periodic inspection information captured under § 229.23, albeit the periodic inspections would be conducted pursuant to a Tier III railroad's approved ITM program. FRA also welcomes comment on whether to make this option available to Tier I or II equipment.

Proposed paragraph (a) would establish a general requirement that for certain periodic inspections as defined by a Tier III railroad's ITM program, certain information be captured with respect to those inspections. Proposed paragraphs (a)(1) through (3) would specify the minimum information required for each inspection record: the date the last inspection was done, the name of the inspector conducting the work, and the name of the supervisor certifying the work was done correctly.

Proposed paragraph (b) would require that the locomotive engineer have access to information from the inspection record and summary report and identify digital (proposed paragraph (b)(1)) and physical methods (proposed paragraph (b)(2)) for enabling that access. Should a railroad using Tier III equipment elect to comply with proposed paragraph (b)(2), use of form 49A (or any future variant) to display or record the particular maintenance information listed in this proposed section would not be required; the railroad would be free to develop its own form unique to its needs for its Tier III equipment.

Proposed paragraph (c) would establish the requirements for a summary report. This summary report is similar in intent to FRA's form 49A (providing pertinent information regarding the state of the trainset to those in the controlling cab), requiring information that is consistent with what is required currently under part 229. However, use of FRA's form is not required for Tier III equipment, as discussed under proposed paragraph (b). This paragraph proposes that the summary report, in whatever form it takes, should contain certain information regarding the specific trainset such as the date(s) of the last periodic inspection required under the railroad's ITM program plan, whether there are any waivers of compliance granted by FRA under part 211 applicable to the trainset, the type of brake system used on the trainset, and whether the event recorder is out of service.

Proposed paragraph (d) would permit compliance with § 229.23 as satisfying the requirements of this section.

Section 238.781 Current Collectors

This proposed section would apply many of the requirements for the use of current collectors in part 229 to passenger equipment and trainsets, with some changes. Proposed paragraphs (a)(1) and (b) would apply requirements from part 229 through cross-references, and proposed paragraph (a)(4) would impose requirements similar to those in part 229, with minor changes. Other paragraphs in this proposed section would contain requirements with no direct counterpart in part 229.

Paragraph (a) proposes requirements for pantographs and other overhead collection systems. Paragraph (a)(1) proposes to apply the requirements of § 229.77(a) to Tier III equipment. Paragraphs (a)(2) and (3) have no counterparts in part 229, and propose requirements to provide additional protection for engineers and other personnel by requiring the electrical grounding of insulated parts to reduce the risk of electric shock and by enabling an engineer to identify the position of and secure the pantograph without mounting the roof of the trainset.

Proposed paragraph (a)(4), which is based on § 229.81(a), would require that, for pantographs used on Tier III trainsets, a means be provided to safely lower the pantograph in the event of an emergency, permitting the use of an emergency pole, subject to certain requirements (such as properly marking where the pole can be safely handled and keeping the pole free from moisture and damage when not in use). Paragraph (a)(4) proposes an additional requirement that a railroad's ITM program identify an alternate means of securement and electrical isolation of a damaged pantograph when automatic methods are not possible.

Paragraph (b) proposes to apply the requirements of §§ 229.79 and 229.81(b) to trainsets equipped with pantographs and third-rail shoes. Although the requirements of §§ 229.79 and 229.81(b) use the term ''locomotive,'' rather than ''trainset,'' the proposed language of paragraph (b) would clarify the application of these requirements to Tier III trainsets.

Section 238.783 Circuit Protection

This section proposes requirements for the protection of electrical circuits used within a Tier III trainset. Proposed paragraph (a) describes the general requirements for circuit protection in Tier III passenger equipment. Proposed paragraphs (b) and (c) would provide requirements for more specific categories of circuit protection, with proposed paragraph (b) addressing lightning protection and proposed paragraph (c) addressing overload and ground fault protection. For purposes of this section, the term ''lightning arrestor'' includes a surge arrestor that also functions as a lightning arrestor.

Section 238.785 Trainset Electrical System

Under this section, FRA is proposing requirements addressing various aspects of a Tier III trainset's electric system and is proposing to apply by cross-reference certain electrical system requirements for locomotives in part 229. Proposed paragraph (a) would address the insulation or grounding of metal parts and apply by cross-reference requirements of §§ 229.83 and 238.225 to trainsets.

Proposed paragraph (b) would address high voltage markings on doors, cover plates, or barriers, and apply by cross-reference the requirements of § 229.85. Although in § 229.85 the words ''Danger-High Voltage'' or ''Danger'' appear with just each word's first letter capitalized, FRA makes clear that use of all capital letters (*i.e.,* ''DANGER–HIGH VOLTAGE'' or ''DANGER'') would also be acceptable. However, font size, symbols, and colors must comply with a national or international standard recognized by the railroad industry, and labels must be retro-reflective. FRA also makes clear that the proposed requirements for marking doors, cover plates, or barriers under this paragraph would apply to the external surfaces of any doors, cover plates, or barriers, and that the marking must be conspicuous and legible. The purpose of these proposed requirements would be negated if the markings were hidden on surfaces blocked from ready view or were otherwise indistinguishable from the external surface, or if the language conveying the warning were illegible.

Proposed paragraph (c) would apply the requirements for hand-operated electrical switches in § 229.87 to Tier III trainsets.

Under the proposed requirements of paragraph (d), trainsets would be subject to the requirements for conductors, jumpers, and cable connections in §§ 229.89 and 238.225(a). As clarification, while § 229.89 refers to cable and jumper connections for a locomotive, proposed paragraph (d) would apply such requirements to Tier III trainsets.

Paragraph (e), as proposed, describes requirements for energy storage systems (batteries and capacitors) on Tier III trainsets. Paragraph (e)(1), which addresses batteries, proposes to apply the requirements of § 238.225(b) and also proposes an additional requirement: battery circuits must include an emergency battery cut-off switch to completely disconnect the energy stored in the batteries from the load.

Paragraph (e)(2), which has no counterpart in part 229, proposes requirements for the design of capacitors for high-energy storage on trainsets and would require that such capacitors be isolated by a fire-resistant barrier from passenger seating areas and the trainset cabs (proposed paragraph (e)(2)(i)) and that the capacitors be designed to protect against overcharging (proposed paragraph (e)(2)(ii)).

Paragraph (f) proposes to apply the requirements for power dissipation resistors in § 238.225(c) to Tier III trainsets, with one additional proposed requirement: power dissipation resistor circuits must incorporate warning or protective devices for low ventilation air

flow, over-temperature, and short circuit failures.

Paragraph (g) proposes to apply the requirements for electromagnetic interference and compatibility in § 238.225(d), so that the onboard electronic equipment, among other things, not produce electrical noise that interferes with the trainline control and communications or wayside signaling systems. In addition to applying the requirements of § 238.225(d), FRA is proposing an additional requirement: electrical and electronic systems of equipment must be capable of operation in the presence of external electromagnetic noise sources.

In paragraph (h), FRA proposes requirements for motors and generators in use on a Tier III trainset. Proposed paragraph (h)(1) contains a general requirement that all motors and generators would be in proper working order or safely cut-out and isolated. Proposed paragraph (h)(2) would require that if motors and generators are equipped with support brackets, bearings, isolation mounts, or guards, those items would be present and function properly as defined by the railroad's ITM program.

Section 238.791 Safety Appliances

Under this section, FRA is proposing a comprehensive set of requirements addressing safety appliances for Tier III trainsets. As described in paragraph (a), this section may also be applied to Tier I passenger-carrying vehicles and trainsets. Non-passenger-carrying passenger locomotives that are not part of an integrated trainset design would be covered under proposed § 238.235. A railroad or supplier may still utilize the relevant passenger rail car safety appliance standards contained in part 231 of this chapter, if appropriate. The proposed safety appliance standards in this section, however, are intended to address modern passenger rail vehicle designs considerations and updated ergonomics from the recommendations provided by APTA and the international car builders represented in the PSWG. FRA notes that the application of these proposed requirements to Tier I equipment would be an all-or-none approach, like the alternative crashworthiness requirements under § 238.201 and appendix G to this part. This means that Tier I equipment would either follow all the requirements, as proposed under this section, or comply with the existing safety appliance requirements for Tier I equipment; however, no mixing of the two sets of requirements would be permitted.

Proposed paragraph (b) outlines the requirements for the attachment of safety appliances to the structural carbody of passenger rail equipment. These requirements are subdivided into two main categories: attachment by mechanical fasteners (*e.g.,* rivets, bolts), and attachment by welding. Proposed paragraph (b)(1) would establish the minimum fastener mechanical strength and fatigue resistance, as provided by a ½-inch SAE Grade 5 bolt, or equivalent, by means of one- or two-piece rivets, Huck bolts®, or threaded fasteners. To ensure that threaded fasteners remain appropriately secured, proposed paragraphs (b)(1)(i) through (v) would provide the acceptable methods that must be followed to ensure that bolts or nuts used to secure the appliance to the carbody do not become loose.

Proposed paragraph (b)(2) addresses the minimum requirements for appliances, sub-assemblies, brackets, and supports that are welded as a means of attachment to the structural carbody. Proposed paragraph (b)(3) would further identify when brackets or supports (*e.g.,* tapping blocks) can be considered part of the structural carbody. FRA notes that there is a small but important distinction between the intended treatment of brackets or supports in paragraphs (b)(2) and (3). Proposed paragraph (b)(2) would apply specifically to brackets and supports that are considered components of the appliance itself (*e.g.,* to add stiffness), as distinguished from supports used for the sole purpose of attaching the appliance to the carbody under proposed paragraph (b)(3).

Proposed paragraph (b)(4) would require that safety appliance designs facilitate the regular inspection of their attachment points to ensure threaded connections are not loose and welds show no signs of premature failure. Proposed paragraph (b)(5) would provide for the use of a minimum factor of safety of two, if the design loads in proposed paragraphs (d)(4)(ii) or (e)(4)(ii) are used as the method of determining appliance strength. FRA makes clear that this proposed requirement would apply only if the design load methodology for appliance strength is utilized, as a factor of safety would not be necessary if the traditional (*e.g.,* ⅝-inch diameter steel, or a material providing an equivalent level of mechanical strength) approach is used.

Proposed paragraph (c) would establish that the appliance and its attachment must be designed to account for fatigue, particularly as it relates to the size of welded connections. Because of the high-vibrational environment in which safety appliances are utilized, particularly where reciprocal engines are also present (*e.g.,* diesel-electric locomotive, diesel multiple-unit), the PSWG wanted to ensure designs accounted for environmental service factors, in addition to obvious static loads. Traditional threaded connections do occasionally come loose in such environments when not secured properly, but generally remain attached, whereas a welded connection may fail completely, without warning, if such considerations are not taken into account. This was a primary concern raised in discussions within the PSWG when alternative language to §§ 238.229 and 238.230 was being considered for welded appliances and components. Therefore, proposed paragraph (c) is intended to complement the other requirements for welded appliances outlined in more detail within this section, to help address many of these concerns.

Proposed paragraphs (d) and (e) address the pertinent requirements for the design of all handholds and sill steps, respectively. FRA notes that the proposed text represents an organizational change from the RSAC recommendations. Because handholds and sill steps are the most common types of safety appliances installed on passenger rail equipment, and the requirements can vary depending on their location and function, FRA believes that by consolidating requirements for all handholds and sill steps, it can avoid repeating requirements that are common to all locations (*e.g.,* clearance, strength) while more succinctly delineating the requirements for specific locations (*e.g.,* end handholds). FRA welcomes comments towards the utility of this approach, and the value of possibly including accompanying drawings in a final rule.

Proposed paragraph (d)(1) would detail the number of handholds required, and any critical dimensions depending on the function, location and arrangement (*i.e.,* horizontal or vertical) of each type of handhold. Proposed paragraph (d)(1)(i) would require handrails to be present at all passenger side door locations but note that internal handrails installed to comply with the requirements of § 38.97(a) or § 38.115(a) of this title, Americans with Disabilities Act Accessibility Specifications for Transportation Vehicles, may be used to satisfy this requirement, recognizing that this would likely be the primary method of compliance.

Proposed paragraph (d)(1)(ii) addresses the minimum requirements for locations where external access to the cab of a trainset, power car, or

locomotive is provided, other than for passenger access. These locations typically include one or more vertical handholds and sill steps stacked in ''ladder'' arrangement for crewmembers to access the cab from the ground level.

Proposed paragraph (d)(1)(iii) addresses the requirements for all side handholds. Side handholds are required at any location where sill steps are installed, including those required by statute or regulation, and optional installations. A major goal of the PSWG was to address the various arrangements that have been developed over the years to provide better ergonomics. For example, some passenger equipment designs incorporate two horizontal handholds above side sill steps located at car ends, as opposed to the single horizontal handhold design codified under part 231 for most passenger cars. The multiple handhold arrangement was adopted to provide better ergonomics for crews riding on car ends performing switching moves and other activities, while providing a lower handhold for stability from the ballast level. Proposed paragraphs (d)(1)(iii)(A) through (F) provide specific dimensions for the different types of arrangements that are commonly used on modern passenger rail equipment.

Proposed paragraph (d)(1)(iv) provides the requirements for end handholds. End handholds are generally required at the end of any car where a coupler is installed that requires crewmembers to manually couple, uncouple, or make electrical or pneumatic connections, as detailed in this section. The PSWG recommendations added additional language to address position requirements for vehicles with tapered (aerodynamic noses), included in proposed paragraph (d)(1)(iv)(C), and when the use of an uncoupling lever is acceptable in lieu of a separate end handhold, as contained in proposed paragraph (d)(1)(iv)(E). Perhaps most significantly, this rule would codify the exception proposed in paragraph (d)(1)(iv)(F) that end handholds would not be required at the ends of vehicles equipped with an automatic coupling mechanism that can be safely operated from inside the appropriate cab of the vehicle and does not require a person to go between vehicle units. This approach has been adopted in numerous, recent equipment designs that incorporate some level of semi-permanent connection (*e.g.,* trainsets, married pair MUs), or utilize a ''fully-automated'' coupling device that can couple or decouple and make all electrical and pneumatic connections without the need for manual intervention. Often these couplers (commonly referred to as ''transit type'' couplers) can be monitored and controlled from the cab of a trainset. FRA is utilizing its authority under 49 U.S.C. 20306 to codify this exception through this rulemaking process.[24] By doing so, FRA anticipates it would eliminate the need for additional waiver requests on the subject and better incorporate modern technology and equipment designs, as the statutory provision intends.

Proposed paragraphs (d)(2) and (3) provide the required minimum handhold dimension and hand clearance requirements.

Proposed paragraph (d)(4) contains the handhold strength and rigidity requirements with proposed paragraph (d)(4)(i) providing an option to utilize the traditional 5/8-inch wrought-iron or steel equivalency strength for those that prefer to design appliances using the traditional approach. In turn, proposed paragraph (d)(4)(ii) reflects the new, design strength approach, as recommended by the PSWG.

Proposed paragraph (d)(5) addresses the use of multiple handholds when arranged vertically in a ''ladder'' type arrangement, often used by crewmembers to access cabs or carbody doors from the ground level.

The requirements for different sill step arrangements are consolidated within proposed paragraph (e) of this section. Proposed paragraph (e)(1)(i) would specify the locations where sill steps must be equipped and proposed paragraphs (e)(1)(ii) and (iii), respectively, the required dimensions. Proposed paragraph (e)(1)(iv) would provide exceptions for where side sill steps are not required. Specifically, under proposed paragraph (e)(1)(iv)(A), side sill steps would not be required if steps are provided for an exterior cab access door in a location where a crewmember can ride the equipment with an unobstructed view of the track ahead. This would reduce the need to have redundant safety appliances where the cab ladder arrangement can be effectively used to safely perform switching moves. Under proposed paragraph (e)(1)(iv)(B), sill steps, as with end handholds, would not be required at locations equipped with an automatic coupling mechanism that can be safely operated from inside the appropriate cab of the vehicle and does not require ground intervention from a person to go on, under, or between the equipment such as to couple air, electric, or other connections. As with other safety appliance requirements proposed in this section, FRA proposes to adopt these common exceptions from the statutory need to equip a vehicle with sill steps by the authority provided in 49 U.S.C. 20306. Doing so would also remove the need for continued waiver requests under this authority for modern passenger equipment designs.[25]

Proposed paragraph (e)(2) provides the various required dimensions for various sill step arrangements. Proposed paragraph (e)(2)(i) would establish the minimum tread length as 10 inches, which is the useable length of the step where a person could place their foot, excluding any construction features such as bend radii where someone could not step onto a flush surface of the step. Proposed paragraph (e)(2)(ii) would establish the clear (unobstructed) distance required above the usable tread of a step. This dimension has historically been referred to as the clear ''depth'' in part 231. The PSWG recommended use of the term ''clear distance'' in the proposal, to avoid historical confusion regarding the meaning of the term ''depth,'' which could also be interpreted as meaning the distance from the outside vertical plane of a step.

Proposed paragraph (e)(2)(ii)(A) would require that a Tier III trainset have a minimum of at least 4.7 inches of clear distance, whereas proposed paragraph (e)(2)(ii)(B) would provide the traditional 8-inch clear distance requirement for Tier I equipment. In discussions with the PSWG, industry requested that FRA adopt the service-proven clear distance based on international standards (4.7 inches). The PSWG noted that this standard has proven appropriate for international high-speed passenger equipment as it reduces the potential pocket size that can be a major contributor to aerodynamic noise. Additionally, the PSWG noted that this standard would help avoid the need for potential modifications to the carbody underframe of service-proven, high-speed trainsets if manufacturers were required to increase the clear distance length to the historical 8 inches. In a continuing effort to harmonize FRA regulations with service-proven international standards to facilitate the implementation of service-proven, high-speed rail in the United States, FRA is proposing to adopt this recommendation. However, as these proposed regulations may also apply to Tier I equipment, FRA is proposing to retain the requirement that Tier I

[24] For further discussion on FRA's proposed use of its discretionary authority under 49 U.S.C. 20306, see section III.E, above, Safety Appliances for Non-Passenger Carrying Locomotives and Passenger Equipment.

[25] *Id.*

equipment maintain a minimum clear distance of at least 8 inches.

Proposed paragraph (e)(2)(iii) would specify the required clear space from the outside edge of a sill step. The purpose of this dimension is to allow the user to have enough room to firmly place the ball of their foot on the step. The most common application of this requirement would be where a step is built directly into the side of a vehicle, or into the pocket of the carbody or side sill of a locomotive or passenger vehicle. The term ''clear space'' is being introduced here to avoid confusion with similar terms, such as clear length and depth. FRA welcomes comments on other terminology that might be considered for this dimension.

Proposed paragraph (e)(2)(iv) would adopt a maximum vertical rise between consecutive sill steps. This proposed requirement is intended to ensure that vertical spacing is ergonomic for users in multiple sill step arrangements, particularly those used in a ladder-type arrangement, and is derived from other regulations such as those for box car ladders outlined in § 231.1(e) of this chapter. Similarly, proposed paragraph (e)(2)(v) would require that proper clearance be provided behind a sill step and running gear or any other moving parts. This is intended to ensure that the truck or other moving part of a passenger vehicle does not come into contact with the boot (foot) of a crewmember riding on a sill step or cab access ladder. This would also effectively prohibit steps being installed directly onto such moving parts, which could present an unsafe condition if the equipment starts to move.

Proposed paragraph (e)(3) would establish the requirements for sill step tread surfaces and provide some examples for acceptable methods. Railroad and suppliers should consider the appropriate anti-skid material to use depending on the functionality of the sill step. For example, if a sill step is also intended to function as a handhold, then it should utilize an anti-skid material that does not affect the use of the handhold. This proposed language would also require that enclosed steps, such as those built into the side sill or carbody of equipment, have at least 50 percent of the tread area as open space to help prevent the minor build-up of snow or ice from impacting the utility of the anti-skid surface.

Proposed paragraph (e)(4) provides the strength requirements for sill steps. These requirements would be similar to those the PSWG recommended for other appliances in this section, but also include an empirical requirement for sill steps constructed with a rectangular cross-section.

Proposed paragraph (f) addresses the minimum crew access locations for new passenger trainsets and individual pieces of equipment. It is intended to ensure that vehicles designed to provide only high-level boarding for passengers also have a means for crewmembers to board a trainset or passenger car from ground level, or alight from one to the ground. Specifically, proposed paragraphs (f)(1)(i) through (iii) would detail when such access locations must be provided and when low-level boarding or cab access locations can be used to satisfy this requirement.

Proposed paragraphs (f)(2)(i) and (ii) provide the requirements for steps and handholds utilized in crew access locations, primarily referencing similar requirements proposed in this section. FRA is also including additional provisions recommended by the PSWG in proposed paragraphs (f)(2)(iii) and (iv), which would allow for crew access steps to be retractable, or for portable ladders to be utilized in lieu of permanently installed external steps, respectively. These proposed requirements were added to address concerns with aerodynamic noise contribution, particularly on Tier III trainsets. If portable ladder arrangements are used, they should be readily accessible to crewmembers, designed to provide strength equivalent to or greater than that required for sill step arrangements in this section, and be securely attached to the equipment.

Proposed paragraph (g)(1) details where ''automatic'' couplers must be equipped, and their functionality, as required by 49 U.S.C. ch. 203. FRA is proposing to codify exemptions from the need to install automatic couplers and their associated appliances (*e.g.,* uncoupling levers, end handholds) on passenger trainsets or equipment with semi-permanent connections, or at the ends of trainsets where couplers are only intended for rescue purposes, as detailed in proposed paragraph (g)(2). As described previously, FRA is proposing to use its authority under 49 U.S.C. 20306 to permanently adopt these exclusions for which waivers are commonly requested for modern trainset and MU passenger equipment designs, and FRA believes this would help reduce the burden associated with such requests.[26]

Proposed paragraph (h) provides the requirements for uncoupling levers or devices and would require uncoupling levers or devices on each vehicle end equipped with an automatic coupler, as required under proposed paragraph (g) of this section. Proposed paragraphs (h)(1)(i) and (ii) would require that an automatic coupler be equipped with either a traditional, manual uncoupling lever or some other uncoupling mechanism operated by controls located in the appropriate cab, or other secure location in a trainset, respectively. Additionally, proposed paragraph (h)(1)(ii) provides that additional uncoupling levers or handles on the coupler that serve only as a backup to the remotely operated mechanism would not be subject to the requirements of proposed paragraph (h)(2).

Proposed paragraph (h)(2) would require that manual uncoupling levers be installed so that the automatic coupler may be operated from the left side of the equipment, as determined when facing the end of the equipment, from ground level without requiring a person to go between cars or equipment units and have a clearance around the handle of 2, preferably 2½, inches. This proposed performance requirement for manual uncoupling levers is a slight departure from the traditional requirements for such appliances under part 231. Yet, FRA believes that adherence to the more rigid, traditional measurement requirements from the coupler to the outside edge of the equipment is not appropriate, as it becomes difficult to determine the proper place at which to measure when equipment ends are tapered. Additionally, by setting the performance requirement as requiring a person to be able to operate the coupler without going between cars or equipment units, the requirement can be easily and objectively measured.

Proposed paragraph (i) would permit the automatic coupler, end handholds, and uncoupling mechanism on the leading and trailing ends of a trainset unit to be located within a removable shroud to reduce aerodynamic effects.

Proposed paragraph (j) would provide that trainsets, and equipment units or sections of trainsets that are not semi-permanently coupled to an adjacent equipment unit or section of trainset, must be equipped with an efficient parking or hand brake capable of holding the trainset, equipment unit, or section of trainset on at least a 3-percent grade, or on the worst-case grade conditions identified by the operating railroad. This proposal is consistent with that for use of worst-case grade conditions under proposed § 238.110.

Proposed paragraph (k)(1) provides for the arrangement of safety appliances on trainsets and equipment units to facilitate certain maintenance tasks.

[26] *Id.*

Should a trainset or equipment unit be equipped with appurtenances such as headlights, windshield wipers, marker lights, and other similar items required for the safe operation of the trainset or equipment unit that are designed to be maintained or replaced from the exterior of the equipment, then the equipment must have handholds and steps meeting the requirements of this section to allow for the safe maintenance and replacement of these appurtenances.

However, under proposed paragraph (k)(2), the requirements under proposed paragraph (k)(1) would not apply if railroad operating rules require, and actual practice entails, the maintenance and replacement of these components by maintenance personnel in locations protected by the requirements of subpart B of part 218 of this chapter equipped with ladders and other tools to safely repair or maintain those appurtenances.

Paragraph (l) would require that any safety appliances installed at the option of the railroad must be approved pursuant to proposed § 238.110.

Subpart I—Trainset Inspection, Testing, and Maintenance Requirements for Tier III Passenger Equipment

Section 238.901 Scope

This proposed subpart would contain specific inspection, testing, and maintenance requirements.

Section 238.903 General Requirements

Proposed § 238.903 would provide an overview of the general requirements applicable to Tier III passenger equipment. Most of these requirements are referenced and described in more detail in other sections of part 238. Accordingly, this proposed section would address the ITM program for Tier III passenger equipment, and specifically the content of the program and the procedures and intervals for performance of inspection, testing, and maintenance activities; requirements for the safe operation of a Tier III trainset; required safety inspections; and requirements for the training and qualification program and retention of records.

Proposed paragraph (a) contains the general requirement that railroads operating Tier III equipment would have an ITM program that contains detailed information regarding the inspection, testing, and maintenance procedures necessary for the railroad to safely maintain and operate its Tier III passenger equipment.

Proposed paragraphs (b)(1) through (8) list specific informational requirements to be discussed in detail as part of the railroad's ITM program. Most notably, proposed paragraph (b)(8) would require the railroad to describe the required operational braking capability for the trainset. Consistent with § 238.731(b), required operational braking capability is proposed as the capability of the trainset to stop from its maximum operating speed within the signal spacing existing on the track over which the trainset is operating under the worst-case adhesion conditions defined by the railroad. Under this proposed requirement, FRA would require railroads to detail the total effective braking power necessary to achieve this performance standard. FRA recognizes that this would mark a significant change in how the health of the brake system is categorized as further discussed under proposed § 238.1003(d)(1). FRA notes that a railroad would need to establish and verify the required operational braking capability during the dynamic testing and commissioning of the trainset under § 238.111.

Proposed paragraph (c) would require that trainsets receive thorough inspections from qualified individuals. It would prohibit a trainset from being put into service with any safety-critical defect until that defect is repaired, except for defects discovered in the brake system during a pre-service inspection under proposed paragraph (c)(2)(i). Proposed paragraphs (c)(1) through (5) would list the specific safety inspections required in addition to any inspection required under subpart H of this part.

A pre-departure inspection, as proposed under paragraph (c)(1), would mean trainset system verifications, inspections, or functional tests that must be performed prior to departure from terminal locations or when operating ends or crews are changed.

Pre-service inspections, as proposed under paragraph (c)(2), would mean those inspections to be performed before a trainset goes into passenger service. They would be conducted at locations where such inspections can be performed safely and properly, typically in a shop location, but also at terminal locations provided a qualified individual performing the inspection can safely go on, under, or between the equipment. This inspection is proposed to be performed before a trainset enters revenue service, at an interval of no more than every 48 hours. As proposed, this inspection would ensure the trainset is safe to enter revenue service, similar to the mechanical and brake inspections required of Tier I trains under subpart D; however, the specifics of the pre-departure inspection proposed here for Tier III trainsets would be defined by each individual railroad in its ITM program. FRA is also proposing certain minimum requirements for pre-service inspections.

Under proposed paragraph (c)(2)(i), the procedures for pre-service inspections would cover all the items required by a pre-departure inspection under proposed paragraph (c)(1). FRA is also proposing to include the specific exception for the brake system as discussed elsewhere in this NPRM in that, should the pre-service inspection uncover an issue with brake system, but yet the brake system still meet or exceed the required operational braking capability, the trainset may enter passenger service, assuming no other safety-critical defect is discovered. However, in accordance with proposed § 238.1003(d)(1), this practice would be permitted only for up to 5 consecutive calendar days, at which time the trainset could no longer continue in service and would be required to have the brake system fully repaired. Further, should a pre-service inspection reveal that the brake system no longer meets the required operational braking capability, then the trainset would not be permitted to enter or continue in passenger service and must move immediately to a repair location with the trainset not being able to depart the repair location until all defects were repaired.

Paragraph (c)(2)(ii) proposes another minimum requirement in that an interior inspection of the trainset must be performed of the emergency systems to ensure proper functionality of certain emergency systems (such as public address, intercom, and emergency lighting systems) and to ensure that any permitted tools or other implements necessary for emergency egress are present.

Paragraph (c)(3) proposes that the railroad's ITM program have one comprehensive section or chapter where the railroad would detail all the required brake inspections to be performed on the trainset, to include the procedures for performing those inspections, along with the periodicity of inspections. This would include brake system inspections performed as part of other inspections, such as a pre-service inspection. FRA envisions this section or chapter of a railroad's ITM program as a central repository of the brake system inspections for ease of reference and use. This discussion is equally applicable to proposed paragraph (c)(4), with respect to truck inspections.

Under paragraph (c)(5), FRA is proposing that the railroad detail all other safety-critical periodic inspections

that are required to maintain the safety of the trainset. Rather than attempt to exhaustively list all those types of inspections, FRA is placing the responsibility on the railroad to thoroughly evaluate and document the required safety-critical inspections. FRA would expect to see inspections of the electrical and train control systems, as examples. However, consistent with FRA's overall approach to high-speed train inspection, testing, and maintenance, FRA would provide the railroad discretion in the development of its ITM program, subject to FRA's review and approval, discussed below.

To set a baseline, FRA is proposing under paragraph (d) that the railroad specify in its initial ITM program submission the initial scheduled maintenance intervals for Tier III equipment. Deviations from this baseline for safety-critical components could only be implemented when approved by FRA, and those changes would require justification by accumulated, verifiable operating data.

Proposed paragraph (e) contains the training and qualification program requirements for individuals performing inspections, testing, or maintenance on Tier III trainsets. Proposed paragraph (e)(1) would require the railroad to identify which inspections, tests, or maintenance tasks require special training or qualification.

Proposed paragraph (e)(2) would require the railroad to develop a training and qualification program for those tasks identified under proposed paragraph (e)(1) of this section that, at a minimum, addresses those items listed under § 238.109(b).

Proposed paragraph (e)(3) would require the railroad to maintain a list of those individuals designated as qualified pursuant to the railroad's training and qualification program to perform those tasks identified in proposed paragraph (e)(1). The railroad would be required to make those records available to FRA upon request.

Proposed paragraph (e)(4) contains the proposed, overarching requirement that only those individuals qualified pursuant to the railroad's training and qualification program can inspect, test, or maintain safety-critical components or systems on Tier III equipment. This approach was recommended by the RSAC to avoid more specifically defining those who can or cannot perform certain inspection, testing, or maintenance tasks under the regulation.

Proposed paragraph (f) specifies that the railroad would maintain records of each inspection required under proposed paragraph (c) for at least one year from the date of the inspection.

Section 238.905 Compliance

This proposed section would require the railroad to adopt and comply with its ITM program once approved by FRA under proposed § 238.913.

Section 238.907 Standard Procedures for Safely Performing Inspection, Testing, Maintenance, and Repairs

Proposed paragraph (a) would require the railroad to establish standard procedures addressing the performance of inspection, testing, maintenance, and repair tasks, and identify the informational, approval, enforcement, and review processes that must be included in the procedures. Under proposed paragraph (a)(5), ''the railroad's official responsible for safety'' would be the party who must approve the written standard procedures; however, FRA invites comment whether it would be more appropriate to designate the head of high-speed rail maintenance, the chief maintenance officer, some other railroad official, or a combination thereof, as the ''railroad's official responsible for safety.''

Proposed paragraph (b) clarifies that FRA does not intend for the ITM program required by this subpart I to address employee working conditions related to the performance of the inspections, tests, and maintenance required by the program. Such working conditions are the purview of the Occupational Health and Safety Administration.

Section 238.909 Quality Control/Quality Assurance Program

This proposed section would require that each railroad establish an inspection, testing, and maintenance quality control/quality assurance program for the purpose of ensuring that each railroad performs its inspections, testing, and maintenance in accordance with its approved ITM program. Either the railroad or its contractors would be able to perform compliance responsibilities related to the quality control program established under this proposed section.

Section 238.911 Inspection, Testing, and Maintenance Program Format

This proposed section establishes the format in which the ITM program would be submitted to FRA for review and approval.

Proposed paragraph (a) would require that the railroad prepare a complete ITM program covering all components, systems, or sub-systems on a Tier III trainset, regardless of whether the railroad deems those components, systems, or sub-systems safety-critical. This would include all inspections, tests, and maintenance tasks required, the intervals and periodicity of those inspections, tests, and maintenance tasks, and all associated information and procedures required for the railroad and its personnel to implement the program. The purpose behind this proposed requirement is to allow FRA to ensure that the railroad has properly captured all safety-critical items. Under proposed paragraph (b), below, the railroad would be required to submit a condensed version of the program addressing only the safety-critical elements as deemed by the railroad. FRA notes that under proposed § 238.913, FRA would approve the ITM program addressing only those safety-critical elements. Additionally, once the ITM program has received its initial approval, FRA would not expect submission of the complete ITM program with any future amendment to a safety-critical portion.

Proposed paragraph (b) would require the railroad to submit a condensed version of the ITM program, with only the program items identified as safety-critical by the railroad. It would be this condensed version of the ITM program that FRA would approve under § 238.913. Nevertheless, FRA has identified certain components or systems that are always considered safety-critical, such as the operation of emergency equipment, emergency back-up systems, trainset exits, and trainset safety-critical hardware and software systems.

FRA invites comment on the utility of this approach.

Section 238.913 Inspection, Testing, and Maintenance Program Approval Procedure

Under this section, FRA is proposing the procedures for the submission and approval of the railroad's ITM program.

Proposed paragraph (a) describes requirements for both the initial submission of the ITM program and the submission of amendments. With respect to the initial submission, the proposed language under paragraph (a)(1) explains that the ITM program must be submitted no less than 180 days prior to the commencement of revenue service. FRA makes clear though, that the mileage accumulated during dynamic qualification testing must be accurately recorded in the maintenance records of the trainsets so that prior to entering revenue service, the trainset is current on all required inspection, tests, and maintenance required under the ITM based on the mileage of the trainset. Thus, if a certain maintenance interval is specified in miles, FRA expects that the milage incurred during

dynamic pre-revenue testing would be used when determining whether maintenance of the equipment is necessary. FRA recognizes that for the dynamic testing of Tier III equipment, the test procedures required under § 238.111 and appendix K must include the inspection, testing, and maintenance procedures to be followed to ensure testing is conducted safely.

Proposed paragraph (a)(2) would require that an amendment to an approved ITM program must be submitted for approval not less than 60 days prior to the railroad's proposed implementation date. FRA welcomes comments on the appropriate review period for both the initial submission and the submission of program amendments.

Proposed paragraph (b) identifies the required content for the ITM program or program amendment submission. As proposed, not only must the railroad submit the ITM program or amendment itself, but it must also include the primary point of contact for the program or amendment and affirm that the program or amendment was provided to the designated representatives of railroad employees along with a list of the names and addresses of those persons.

Proposed paragraph (c) would require the railroad to provide a copy of the ITM program or amendment to the designated representatives of railroad employees responsible for the equipment's operation, and inspection, testing, and maintenance under this subpart. Additionally, this proposed paragraph would impose a deadline of 45 days for providing comment to FRA. Proposed paragraphs (c)(1) through (3) would outline the required process for each comment.

Proposed paragraphs (d)(1) and (2) would explain the approval process for the initial ITM program submission and amendments, the timing of FRA's review and approval determination, and the requirement to correct a program or amendment if FRA discovers a deficiency during its review.

Notably, under proposed paragraph (d)(3), at any time after its approval determination, FRA would retain the ability to review the program and amendments under its general inspection authority and to require further corrections to the ITM program or amendment. Submittal of a revised program or amendment made pursuant to this paragraph would follow the submittal procedures detailed in proposed paragraphs (d)(1) and (2).

Proposed paragraph (e) would establish requirements for the annual review of the ITM program, addressing the scheduling of such review with FRA and the designated representatives of railroad employees.

Subpart J—Movement of Defective Tier III Passenger Equipment

Section 238.1001 Scope

This proposed subpart would contain specific requirements for the movement of Tier III passenger equipment that is defective.

Section 238.1003 Movement of Defective Tier III Passenger Equipment

Under § 238.1003, FRA is proposing the procedural requirements for the movement of defective Tier III equipment. These requirements would address defective conditions identified during a pre-service inspection and defective conditions discovered during revenue service operations.

Except as explained in proposed § 238.903(c)(2)(i) and paragraph (d) of this section, proposed paragraph (a) would describe the general prohibition on the movement of a Tier III trainset with a defect identified during a pre-service inspection and specify that such a trainset may only move pursuant proposed paragraph (e), as explained in more detail below.

Proposed paragraph (b) would describe the procedural requirements for the movement of a Tier III trainset with a safety-critical defect discovered during revenue service operations (such as during a pre-departure inspection under proposed § 238.903(c)(1)) and between required pre-service inspections. Under these proposed requirements, an individual qualified pursuant to proposed § 238.903(e) would be required to make a determination, consistent with railroad operating rules, that it is safe to move the trainset (proposed paragraph (b)(1)). It would be permissible for such a qualified individual to make this determination remotely based on information provided by on-site personnel, provided that a qualified individual performs an on-site inspection of the defect when the trainset arrives at the first location where an on-site inspection by a qualified individual is possible.

After determining that it is safe to move the defective trainset, the qualified individual would be required to notify the train crew of the authorized speed and destination, and any other operational restrictions on the movement of the non-compliant trainset, pursuant to proposed paragraph (b)(2). The qualified individual may provide this notice through the tagging process described in proposed paragraph (b)(3) or through the automated tracking system described in proposed paragraph (c), which would adopt the requirements of § 238.15(c)(3).

Proposed paragraph (d) addresses the requirements for the movement of a trainset that experiences an in-service failure of the braking system. During PSWG meetings, there was significant discussion regarding the applicability of these requirements to trainsets with advanced technology brake systems and automated reporting systems that provide the engineer with real-time information concerning the operative brakes within the trainset. Specifically, there was discussion that these modern Tier III trainsets are designed and equipped with a braking capability that most often exceeds what is necessary for routine operational braking. Thus, FRA is proposing a balanced approach that considers the operational capability of these trainsets without compromising safety.

A such, under proposed paragraph (d)(1), a trainset may continue in service for no more than 5 consecutive calendar days (to include leaving a repair point) so long as the trainset meets or exceeds its required operational braking capability. As discussed above under proposed § 238.903(a)(8), the railroad would be required to describe in detail in its ITM program this required operational braking capability. Additionally, FRA clarifies that consistent with the proposal under § 238.19(d)(2), after 5 consecutive calendar days elapse, a Tier III trainset may not leave a designated brake repair point with anything less than a brake system that is free from defects, regardless of whether the trainset meets or exceeds its required operational braking capability (*i.e.,* with 100% operative brakes). This would mean a Tier III trainset may leave a designated brake repair point with less than its maximum designed braking capability, so long as it retains its required operational braking capability pursuant to § 238.731(b). FRA is proposing this approach based on industry's input, which is consistent with international, service-proven operational practice.

Under paragraph (d)(2), FRA is proposing requirements for a trainset that has in-service failure of the brake system bringing it below the required operational braking capability. FRA is proposing that in such a situation, a trainset may only move in service until its next pre-service inspection in accordance with railroad operating rules relating to the percentage of operative brakes and at a speed no greater than the maximum authorized speed as

determined by § 238.731(e)(4), so long as the requirements of paragraph (b) of this section are otherwise fully met. Under this proposal, if a pre-service inspection becomes due on such a trainset, and the brake system has not been repaired, then the trainset may not be used in passenger service until such repairs are made.

As part of the comment process for this proposed rulemaking, FRA welcomes input on the appropriateness of these proposed requirements for the movement of defective trainsets equipped with advanced technology brake systems.

Under proposed paragraph (e), a railroad would be permitted to move a trainset with a safety-critical defect discovered during a pre-service inspection for purposes of repair without complying with the procedural requirements of proposed paragraph (b), provided the movement is without passengers, within a yard, at speeds not to exceed 10 mph, and for the sole purpose of repair. FRA is also proposing that, should a railroad elect to repair a trainset with a safety-critical defect in place, it would be required, at a minimum, to apply a tag that complies with proposed paragraph (b)(3) to provide notice that the trainset is defective and not in service. FRA makes clear that the tag is to be applied while the trainset is non-compliant; once the repair is made, the tag may be removed, and the trainset placed into service.

Proposed paragraph (f), which is identical to § 238.17(f), makes clear that the movement of a defective Tier III trainset subject to a Special Notice for Repair under part 216 would continue to be subject to the restrictions in a Special Notice.

Appendix C to Part 238—Minimally Compliant Analytical Track (MCAT) Simulations Used for Qualifying Passenger Vehicles To Operate on Track Classes 2 Through 5 and Up to 6 Inches of Cant Deficiency

This proposed appendix would contain requirements for using computer simulations to comply with the vehicle/track system qualification testing requirements specified in § 238.139. These simulations would be performed using a track model containing defined geometry perturbations at the limits that are permitted for a specific class of track and level of cant deficiency. This track model is known as Minimally Compliant Analytical Track (MCAT). These simulations would be used to identify vehicle dynamic performance issues prior to service or, as appropriate, a change in service, and demonstrate that a vehicle type is suitable for operation on the track over which it is intended to operate. FRA notes that, for the short warp (a_{12}) MCAT segment in figure 1, the profile deviations for the inside and outside rails appear in reverse order from their counterparts in appendix D to part 213. This change aims to address the risk of low-speed, wheel-climb derailment, and FRA welcomes comment on the need for a similar change to appendix D to part 213.

For simulations measuring hunting perturbation involving tangent track segments, FRA proposes the use of a high-conicity, wheel-rail profile combination approved by FRA that produces a minimum conicity of 0.4 for wheelset lateral shifts up to flange contact. FRA has added to the docket a file that reflects wheel-rail profile combinations FRA has found acceptable in the past, and welcomes comment on this data or the incorporation of such combinations into the regulation.

As noted under the discussion of proposed § 238.139, Vehicle/track system qualification, the proposed requirements are intended to complement existing requirements for higher speed and higher cant deficiency operations in part 213 of this chapter. Specifically, this appendix would apply to operations up to 6 inches of cant deficiency on lower-speed track classes, and would have no impact on part 213 requirements for operations over 6 inches of cant deficiency on such track classes. By illustration, proposed table 6 would apply to track Classes 2 through 5 where cant deficiency exceeds 5 inches but is not more than 6 inches, while table 7 of appendix D to part 213 currently applies to track Classes 1 through 5 where cant deficiency exceeds 6 inches. Although there would be no direct conflict in application of the respective appendices, FRA notes in particular that the differences in repeated surface limits and repeated alinement limits between the two tables may not necessarily be explained by the differences in cant deficiency alone. FRA therefore welcomes comments on the potential impact of the proposed changes, will evaluate any comments received, and will consider revisions to both parts 213 and 238 in the final rule or a future rulemaking.

Appendix I to Part 238—Tier III Trainset Cab Noise Test Protocol

In proposed appendix I to part 238, which is modeled after appendix H to part 229 of this chapter, FRA presents proposed testing protocols to verify that the noise levels within the cab of a Tier III trainset comply with the requirements established in § 238.759(a)(1). These proposed protocols address measurement instrumentation, test site requirements, procedures for measurement, and recordkeeping. In this proposal, FRA is intending to align these measurement procedures with those used in international practice and welcomes comments on any relevant international practice that could contribute to the further development of the proposed protocols. FRA also notes that although the requirements proposed in this appendix are very similar to those under appendix H to part 229, this appendix would also contain a separate set of requirements due to subtle but significant differences. Notably, the test proposed under this appendix would be under dynamic conditions, while the trainset is moving, whereas the test under appendix H to part 229 is under static conditions, not involving equipment movement.

Appendix J to Part 238—Alternative Requirements for Evaluating the Crashworthiness and Occupant Protection Performance of a Tier I Passenger Trainset Equipped With Crash Energy Management Features

Proposed appendix J would establish a framework that enables the evaluation of an individual piece of Tier I passenger equipment for compliance with crash energy management (CEM) requirements. Current regulations provide for the assessment of CEM components in the context of a complete trainset. Although a railroad, equipment manufacturer, or other party is not required to incorporate CEM features into an individual piece of Tier I equipment, this proposed appendix would provide direction for the development of these features for a single vehicle, rather than a complete trainset. Under the framework of this proposed appendix, single pieces of rail equipment that are fully compliant with existing Tier I structural requirements, and have additional CEM features, could operate within conventional, Tier I-compliant trains.

Proposed appendix J would define in-line and offset collision scenarios for locomotives, cab cars, and intermediate cars. As proposed, the crashworthiness requirements contained in proposed appendix J would not apply to Tier I alternatively designed trainsets or single pieces of equipment with traditionally compliant structures outfitted with pushback couplers as the only CEM feature.

Current industry standards served as a model for the crashworthiness requirements proposed in this

appendix, and FRA welcomes comments addressing the consistency between the appendix and industry standards.

Appendix K to Part 238—Minimum Information for Test Procedures

FRA is proposing to add appendix K to part 238 to contain the minimum information necessary for test procedures associated with the required testing to be performed pursuant to the railroad's pre-revenue service acceptance testing plan under § 238.111. This is to ensure that testing is performed in a safe and controlled manner, and that the testing captures information critical to the demonstration of compliance. FRA understands this level of information may not be available for all tests at the time of initial submission of a test plan; however, if a test procedure relied on for a test does not contain this minimum level of information, FRA may take exception to it and require the test be repeated or the test procedure updated. This determination may be made in advance of testing (*e.g.,* if FRA personnel plan to witness the testing) or as part of a records review, and FRA encourages railroads and their suppliers to pay particular attention to the quality and content of their test procedures and records to avoid any such issues.

V. Regulatory Impact and Notices

A. Executive Order 12866

This proposed rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866 (''Regulatory Planning and Review'') and DOT Order 2100.6A (''Rulemaking and Guidance Procedures'').

FRA has prepared and placed in the docket (FRA–2021–0067) a Regulatory Impact Analysis (RIA) addressing the economic impacts of this proposed rule. The RIA estimates the costs and benefits of this proposed rule over a 30-year period. FRA used discount rates of 7 and 3 percent with these estimates. For the 30-year period analyzed, the net costs of this proposed rule are estimated to be approximately $55.2 million, undiscounted. The present value is approximately $21.4 million, discounted at 7 percent, and $35.2 million, discounted at 3 percent. The annualized net costs are approximately $1.7 million and $1.8 million, discounted at 7 and 3 percent, respectively.

The analysis of this proposed rule includes estimates of costs associated with the proposed requirement for low-speed vehicle/track system qualification, emergency roof access for certain Tier III trainsets, as well as for the inspection, testing, and maintenance of high-speed trainsets. FRA estimates that the 30-year total costs of this proposed rule would be approximately $55.5 million, undiscounted. The present value is approximately $21.7 million, discounted at 7 percent, and $35.5 million, discounted at 3 percent.

REGULATORY COST SUMMARY

	Vehicle track analyses	Emergency roof access cost	ITM costs	Total costs	Discounted 7%	Discounted 3%
Total	$1,350,000	$1,650,000	$52,500,000	$55,500,000	$21,669,972	$35,489,848
Annualized					1,746,305	1,810,666

This analysis also estimates the benefits associated with: (A) railroads not needing to apply for a waiver for pilots, snowplows, and end plates installed on Tier III trainsets; (B) railroads not having to redesign Tier III trainsets to account for legacy attachment strength requirements for emergency communication equipment back-up power fixtures; (C) modernizing the safety appliance requirements for Tier III and certain Tier I passenger equipment, and for certain non-passenger carrying locomotives (reducing the need for railroads to seek statutory exemptions); and (D) a reduction in the administrative burden of processing, reviewing, and implementing safety regulatory waivers. FRA estimates a 30-year total benefits of approximately $0.3 million, undiscounted, for this proposed rule. The present value is approximately $0.2 million, discounted at 7 percent, and $0.3 million, discounted at 3 percent.

REGULATORY BENEFITS SUMMARY

	Pilots, snowplows, end plates	Emergency communications	Safety appliances	Government benefits	Total benefits	Discounted 7%	Discounted 3%
Total	$18,576	$150,000	$55,728	$74,304	$298,608	$224,959	$256,003
Annualized						18,129	13,061

The net costs of this proposed rule are estimated to be approximately $55.2 million, undiscounted. The present value is approximately $21.4 million, discounted at 7 percent, and $35.2 million, discounted at 3 percent. The annualized net costs are approximately $1.7 million and $1.8 million, discounted at 7 and 3 percent, respectively.

NET REGULATORY COSTS

Impact	Present value 7%	Present value 3%
Costs	$21.67	$35.49
Benefits	0.22	0.26
Net Costs	21.45	35.23

NET REGULATORY COSTS—Continued

Impact	Present value 7%	Present value 3%
Annualized Net Costs	*1.73*	*1.80*

Details on the estimated costs and benefits of this proposed rule can be found in the RIA associated with this docket. FRA invites comments on the costs and benefits associated with this proposed rule.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 [27] and E.O. 13272 [28] require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Administrator of the Federal Railroad Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

FRA is submitting the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995.[29] The sections that contain the new or revised information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [30]	Total cost equivalent (E) = C * D
229.47(a)–(b)—Emergency Brake Valve—Marking brake pipe valve as such.	FRA anticipates zero submissions for stencils and markings.					
238.7—Waivers	34 railroads	12.00 waivers	6 hours	72.00	$77.44	$5,575.68
238.15(b)—Movement of passenger equipment with power brake defects—Limitations on movement of passenger equipment containing a power brake defect at the time a Class I or IA brake test is performed—Passenger equipment tagged or information is recorded as prescribed under § 238.15(c)(2).	34 railroads	1,000.00 tags	3 minutes	50.00	77.44	3,872.00
—(c) Limitations on movement of passenger equipment in passenger service that becomes defective en route after a Class I or IA brake test—Tagging of defective equipment.	34 railroads	288.00 tags	3 minutes	14.40	77.44	1,115.14
—(c)(4) Conditional requirement—Notice between employees.	The estimated paperwork burden for this regulatory requirement is covered under § 238.15(a)–(b).					
238.17—Movement of passenger equipment with other than power brake defects—Tagging of defective equipment.	34 railroads	200.00 tags	3 minutes	10.00	77.44	774.40
—(e) Special requisites for movement of passenger equipment with safety appliance defects.	The estimated paperwork burden for this regulatory requirement is covered under § 238.17.					
—(e)(4) Crewmember notifications	The estimated paperwork burden for this regulatory requirement is covered under § 238.17.					
238.19(b)—Reporting and tracking defective passenger equipment—Retention or availability of records for Tier I and Tier III (Revised requirement).	For Tier I trainsets, FRA determined since the 1990s retention and availability of records for reporting and tracking defective passenger equipment are performed by the railroad industry as part of their normal business operations. For Tier III, FRA anticipates zero railroad submissions during this 3-year ICR period.					
—(d)(1) List of repair points—Railroads operating long-distance intercity and long-distance Tier II passenger equipment.	This ICR only affects Amtrak, which has submitted the necessary list of power brake repair points. FRA does not anticipate any changes or updates to this list over the next few years. Consequently, there is no burden associated with this requirement.					
—(d)(2) List of repair points—Railroads operating Tier III passenger trainsets (New requirement).	FRA anticipates zero railroad submissions during this 3-year ICR period.					
238.21(b)—Special approval procedure—Petitions for special approval of alternative standard.	34 railroads	1.00 petition	16 hours	16.00	77.44	1,239.04
—(c) Petitions for special approval of alternative compliance	34 railroads	1.00 petition	40 hours	40.00	77.44	3,097.60
—(f) Comments on petitions	Manufacturers and public.	2.00 comments	1 hour	2.00	77.44	154.88
238.103(c)—Fire safety analysis for procuring new passenger cars and locomotives.	1 new railroad	1.00 analysis	150 hours	150.00	77.44	11,616.00
—(d) Fire safety analysis for existing passenger cars and locomotives—Revised fire safety analysis for leased or transferred equipment.	34 railroads	1.00 revised analysis.	10 hours	10.00	77.44	774.40
238.105(a)–(e)—Passenger electronic hardware and software safety—Safety program including safety analysis for new and existing railroads (Revised requirement).	2 new railroads.	2.00 program plans.	150 hours	300.00	77.44	23,232.00

[27] 5 U.S.C. 601 *et seq.*

[28] 67 FR 53461 (Aug. 16, 2002).

[29] 44 U.S.C. 3501 *et seq.*

[30] Throughout the tables in this document, the dollar equivalent cost is derived from the 2020 Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75-percent overhead charges.

[31] Totals may not add due to rounding.

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Wage rate	Total cost equivalent
		(A)	(B)	(C) = A * B	(D) [30]	(E) = C * D
—(f) Additional requirements (Revised requirement)	FRA anticipates zero railroad submissions during this 3-year ICR period.					
—(g) Vehicle Communication and Control System Vulnerability Assessment—Railroad to assess and identify potential system vulnerabilities and resulting risk mitigation as part of the overall Railroad System Safety Plan required by part 270; PTC system must comply with the requirements in § 236.1033 (New requirement).	37 railroads	12.30 assessments.	20 hours	246.00	77.44	19,050.24
—(h) Notification of product failure—Notification to FRA (New requirement).	20 suppliers	0.33 notifications.	1 minute	0.01	77.44	0.77
238.107—Inspection, testing, and maintenance plan—Development of maintenance plan for new railroads.	1 new railroad	1.00 maintenance plan.	150 hours	150.00	77.44	11,616.00
—(d) Inspection, testing, and maintenance plan for existing railroads—Maintenance plan review.	34 railroads	34.00 maintenance plan reviews.	20 hours	680.00	77.44	52,659.20
238.108(a)—New passenger service pre-revenue safety performance demonstration—Pre-revenue safety validation plan (New requirement due to Sec. 22416 of the IIJA).	37 railroads	3.00 plans	63 hours	189.00	77.44	14,636.16
—(b)(2) Daily summary of the activities provided to FRA by railroads (New requirement).	37 railroads	29.00 summary reports.	30 minutes	14.50	77.44	1,122.88
—(b)(3) Railroad to provide a final report to FRA (New requirement).	37 railroads	3.00 reports	2 hours	6.00	77.44	464.64
—(c) Compliance—Railroads to notify FRA on proposed amendments (New requirement).	37 railroads	1.00 plan modification.	15 hours	15.00	77.44	1,161.60
238.109(b)—Training, qualification, and designation program—Development of training program/curriculum for new railroads.	1 new railroad	1.00 training program.	160 hours	160.00	77.44	12,390.40
—(b) Training employees and supervisors	The associated burdens relating to the training of employees and supervisors have been addressed previously when FRA calculated the economic costs of the regulation.					
—(b)(13) Recordkeeping—Employees and trainers—Training qualifications.	34 railroads	488.00 records	3 minutes	24.40	77.44	1,889.54
238.110(b)(1)—Design criteria, testing, documentation, and approvals—Documentation and recordkeeping (New requirement).	The estimated paperwork burden for this regulatory requirement is covered under paragraphs (b)(2) through (g)(2) of this section.					
—(b)(2) Recordkeeping or documentation (New requirement)	37 railroads	1.00 retention of document.	5 minutes	.08	77.44	6.20
—(c)(1)(ii) Vehicle qualification plan—Compliance matrix (New requirement).	37 railroads	1.00 new or modified plan.	75 hours	75.00	77.44	5,808.00
—(c)(2) Approval of the vehicle qualification plan—Vehicle qualification plan disapproved in part—Resubmission (New requirement).	FRA anticipates zero railroad submissions during this 3-year ICR period.					
—(d) System description (operating environment) and design criteria (New requirement).	37 railroads	11.67 system descriptions.	75 hours	875.25	77.44	67,779.36
—(e)(2)(i) Structural carbody crashworthiness compliance—A test plan submission to FRA (New requirement).	37 railroads	1.00 new or modified test plan.	8 hours	8.00	77.44	619.52
—(e)(2)(ii) Structural carbody crashworthiness compliance—Finite element analysis results submitted to FRA (New requirement).	37 railroads	1.00 analysis	10 hours	10.00	77.44	774.40
—(f) Safety Appliances (New requirement)	The estimated paperwork burden for this regulatory requirement is covered under paragraphs (g)(1) and (g)(2) of this section.					
—(g)(1)(i) Approval of design review documentation, tests, and inspections—Design review, testing, and inspection documentation (New requirement).	37 railroads	1.00 new or modified documentation.	4 hours	4.00	77.44	309.76
—(g)(1)(ii) Approval of design review documentation, tests, and inspections—Resubmission of revised document (New requirement).	37 railroads	1.00 revised document.	1 hour	1.00	77.44	77.44
—(g)(2)(i) Approval of design review documentation, tests, and inspections—Sample-equipment inspection—Request (New requirement).	37 railroads	1.00 request	1 hour	1.00	77.44	77.44
—(g)(2)(ii) Approval of design review documentation, tests, and inspections—Railroad to address all exceptions taken and then, if directed by FRA, request a reinspection pursuant to (g)(2)(i) of this section (New requirement).	37 railroads	1.00 re-request	1 hour	1.00	77.44	77.44
238.111(a)(1)–(2)—Pre-revenue service acceptance testing—Passenger equipment designs that have not been used in revenue service in the U.S.—Plan and submission to FRA (previously under § 238.111(b)(1)–(2)) (Revised requirement).	37 railroads	2.00 new and modified plans.	192 hours	384.00	77.44	29,736.96

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Wage rate	Total cost equivalent
		(A)	(B)	(C) = A * B	(D) [30]	(E) = C * D
—(a)(3)–(4) Test procedures containing minimum information listed in appendix K to this part to be provided to FRA as part of pre-revenue service acceptance testing plan test procedures (previously under § 238.111(b)(3)–(4)) (Revised requirement).	The estimated paperwork burden for this regulatory requirement when it comes to the test plan development is covered under § 238.111(a). Additionally, the reporting of the test results is covered under § 238.111(a)(6)(ii).					
—(a)(6)(i) Tier I passenger equipment: Test results made available to FRA upon request (previously under § 238.111(b)(4)) (Revised requirement).	33 railroads	1.00 test result	4 hours	4.00	77.44	309.76
—(a)(6)(ii) Tier II & Tier III passenger equipment: Report of test results to FRA (previously under § 238.111(b)(4)) (Revised requirement).	4 railroads	1.00 letter	4 hours	4.00	77.44	309.76
—(a)(7) Correction of safety deficiencies—Railroads can petition FRA for a waiver of a safety regulation under the procedure specified in part 211 (previously under § 238.111(b)(5)).	FRA anticipates zero railroad submissions during this 3-year ICR period.					
—(b) Passenger equipment that has previously been used in revenue service in the U.S.—Railroads to verify the applicability of previous tests performed under § 238.111(a)(1)(vii)(A)–(D) (previously under 238.111(a)(1)) (Revised requirement).	37 railroads	1.33 plans	16 hours	21.28	77.44	1,647.92
—(c) Modifications, new technology, and major upgrades (Revised requirement).	The estimated paperwork burden for this regulatory requirement is covered under § 238.111(a).					
238.115(c)—Emergency lighting—Periodic inspection (New requirement).	The inspection time and mechanical testing are covered under the economic cost. Consequently, there is no PRA burden.					
238.131(a)—Exterior side door safety systems—new passenger cars and locomotives used in passenger service—Labels and visual guidelines (Revised requirement).	FRA anticipates zero railroad submissions during this 3-year ICR period.					
—(b) Exterior side door safety systems—new passenger cars and locomotives used in passenger service—Failure Modes, Effects, Criticality Analysis (FMECA).	1 new railroad	1.00 analysis ..	80 hours	80.00	77.44	6,195.20
238.133(a)—Exterior side door safety systems—Passenger cars and locomotives used in passenger service—By-pass device verification—Functional test plans.	1 new railroad	1.00 plan	4 hours	4.00	77.44	309.76
—(b) Unsealed door by-pass device—Notification to railroad's designated authority by train crewmember of unsealed door by-pass device.	The associated burdens related to safety job briefings have been addressed previously when FRA calculated the economic costs of the regulation.					
—(c) En route failure—Safety briefing by train crew when door by-pass device is activated.	34 railroads	100.00 topic-specific briefings and notifications.	2 minutes	3.33	77.44	257.88
—(c) Notification to designated RR authority by train crewmember that door by-pass device has been activated.	The estimated paperwork burden for this regulatory requirement is covered above under § 238.133(c).					
—(c)(1) On-site qualified person (QP) description to a qualified maintenance person (QMP) off-site that equipment is safe to move for repairs.	The estimated paperwork burden for this regulatory requirement is covered above under § 238.133(c).					
—(c)(2) QP/QMP notification to crewmember in charge that door by-pass has been activated and safety briefing by train crew.	The estimated paperwork burden for this regulatory requirement is covered above under § 238.133(c).					
—(d) Records	34 railroads	100.00 records	2 minutes	3.33	77.44	257.88
—(d) Records of unintended opening of a powered exterior side door.	The estimated paperwork burden for this regulatory requirement is covered above under § 238.133(d).					
—(g)(2) RR record of by-pass activations found unsealed	The estimated paperwork burden for this regulatory requirement is covered above under § 238.133(d).					
238.135(a)(1)—Operating practices for exterior side door safety systems—Daily job briefings.	The associated burdens related to daily job briefings have been addressed previously when FRA calculated the economic costs of the regulation.					
—(c) Railroads' request to FRA for special consideration to operate passenger trains with exterior side doors or trap doors, or both, open between stations.	The estimated paperwork burden for this regulatory requirement is covered above under § 238.7 or § 238.21.					
—(c)(4) Railroads' response to FRA request for additional information concerning special consideration request.	The estimated paperwork burden for this regulatory requirement is covered above under § 238.7 or § 238.21.					

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Wage rate	Total cost equivalent
		(A)	(B)	(C) = A * B	(D) [30]	(E) = C * D
—(d) Operating rules on how to safely override a door summary circuit or no-motion system, or both, in the event of an en route exterior side door failure or malfunction on a passenger train (Note: Includes burden under § 238.137).	1 new railroad	1.00 operating rule.	8 hours	8.00	77.44	619.52
—(d) Railroads to provide a copy of written operating rules to train crewmembers and control center personnel.	Railroads were required to complete the requirements of this subsection by December 6, 2018, so the estimated paperwork burden is zero.					
—(e) Railroads' training of train crewmembers on requirements of this section.	The associated burdens relating to the training of train crewmembers have been addressed previously when FRA calculated the economic costs of the regulation. FRA estimates the paperwork burdens associated with training recordkeeping under § 238.109 or under the OMB control numbers 2130–0596 or 2130–0533.					
—(e) Railroads' training of new employees	The associated burdens relating to the training of train crewmembers have been addressed previously when FRA calculated the economic costs of the regulation. FRA estimates the paperwork burdens associated with training recordkeeping under § 238.109 or under the OMB control numbers 2130–0596 or 2130–0533.					
—(g) RR operational/efficiency tests of train crewmembers & control center employees.	The associated burdens relating to operational testing or observation of operating crewmembers and control center personnel have been previously addressed when FRA calculated the economic costs of the regulation.					
238.139(e)—Vehicle/track system qualification—New vehicle type qualification testing plan (New requirement).	33 railroads	1.00 testing plan.	120 hours	120.00	77.44	9,292.80
—(e) Vehicle/track system qualification—Existing vehicle type qualification testing plan (New requirement).	FRA anticipates zero railroad submissions during this 3-year ICR period.					
—(g) Vehicle/track system qualification—Qualification testing results (New requirement).	The estimated paperwork burden for this regulatory requirement is covered above under paragraph (e) of this section.					
—(i)(1) Vehicle/track system qualification—Document retention (New requirement).	33 railroads	1.00 record	10 minutes	.17	77.44	13.16
—(i)(2) Vehicle/track system qualification—Written consent of each affected track owner (New requirement).	33 railroads	2.00 written consents.	30 minutes	1.00	77.44	77.44
238.201(b)—Scope/alternative compliance—Supporting documentation demonstrating compliance.	The estimated paperwork burden for this regulatory requirement is covered above under § 238.21.					
—(b) Notice of tests sent to FRA 30 days prior to commencement of operations.	The estimated paperwork burden for this regulatory requirement is covered above under § 238.111(a)(4).					
238.229(c)—Safety appliances—Welded safety appliances—Written lists submitted to FRA by the railroads.	1 new railroad	1.00 list	1 hour	1.00	77.44	77.44
—(d) Defective welded safety appliance or welded safety appliance bracket or support—Tagging.	34 railroads	4.00 tags	3 minutes	.20	59.89	11.98
—(d) Notification to crewmembers about non-compliant equipment.	34 railroads	2.00 notices	1 minute	.03	77.44	2.32
—(g) Inspection plans	1 new railroad	1.00 plan	16 hours	16.00	77.44	1,239.04
—(h) Inspection personnel—Training	The associated burdens relating to training of inspection personnel have been addressed previously when FRA calculated the economic costs of the regulation. FRA estimates the paperwork burdens associated with the retention of training records under § 238.109.					
—(j)(1)(iv) Remedial action: Defect/crack in weld—A record of the welded repair.	The associated burdens relating to inspections have been addressed previously when FRA calculated the economic costs of the regulation. FRA estimates the paperwork burdens associated with the retention of inspection records under § 238.229(k).					
—(j)(2)(iv) Petitions for special approval of alternative compliance—Impractical equipment design.	The estimated paperwork burden for this regulatory requirement is covered above under § 238.21.					
—(k) Records of the inspection and repair of the welded safety appliance brackets.	The estimated burden for this regulatory requirement is covered below under § 238.303 and under the OMB control number 2130–0004 (§ 229.21).					
238.230(b)(1)—Safety Appliances—New equipment—Inspection record of welded equipment by qualified employee.	FRA anticipates zero railroad submissions during this 3-year ICR period.					
—(b)(3) Welded safety appliances: Documentation for equipment impractically designed to mechanically fasten safety appliance support.	FRA anticipates zero railroad submissions during this 3-year ICR period.					
238.231—Brake System—Inspection and repair of hand/parking brake: Records (under FRA Form 6180.49A).	The estimated paperwork burden for this requirement is covered under § 238.303 and under the OMB control number 2130–0004.					
—(h) Procedures verifying hold of hand/parking brakes	1 new railroad	1.00 procedure	2 hours	2.00	77.44	154.88
238.237(a)–(b)—Automated monitoring- Documentation for alerter/deadman control timing.	1 new railroad	1.00 document	2 hours	2.00	77.44	154.88
—(d) Defective alerter/deadman control: Tagging	34 railroads	25.00 tags	3 minutes	1.25	59.89	74.86

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [30]	Total cost equivalent (E) = C * D
238.303—Exterior calendar day mechanical inspection of passenger equipment: Notice of previous inspection.	FRA anticipates zero railroad submissions during this 3-year ICR period.					
—(e)(15) Dynamic brakes not in operating mode: Tag	34 railroads	50.00 tags	3 minutes	2.50	59.89	149.73
—(e)(15)(ii) Conventional locomotives equipped with inoperative dynamic brakes: Tagging.	The estimated paperwork burden for this regulatory requirement is covered above under § 238.303(e)(15).					
—(e)(17) MU passenger equipment found with inoperative/ineffective air compressors at exterior calendar day inspection: Documents.	FRA anticipates zero railroad submissions during this 3-year ICR period.					
—(e)(17)(v) Written notice to train crew about inoperative/ineffective air compressors.	The estimated paperwork burden for this regulatory requirement is covered above under § 238.303(e)(15).					
—(e)(18)(iv) Records of inoperative air compressors	The estimated paperwork burden for this regulatory requirement is covered below under § 238.303(g).					
—(g) Record of exterior calendar day mechanical inspection (Other than locomotives) (* Note: Includes burden for records of inoperative air compressors under § 238.303(e)(18)(iv)).	34 railroads	1,734,115.00 daily inspection records.	1 minute	28,901.92	77.44	2,238,164.68
238.305—Interior calendar day mechanical inspection of passenger cars—Tagging of defective end/side doors.	34 railroads	540.00 tags	3 minutes	27.00	77.44	2,090.88
—(f) Records of interior calendar day inspection	34 railroads	3,102,865.00 daily inspection records.	1 minute	51,714.42	77.44	4,004,764.68
238.307(a)(2)—Periodic mechanical inspection of passenger cars and unpowered vehicles—Alternative inspection intervals: Notifications.	34 railroads	2.00 notices	5 hours	10.00	77.44	774.40
—(c)(1) Notice of seats and seat attachments broken or loose.	34 railroads	200.00 notices	2 minutes	6.67	59.89	399.47
—(e)(1) Records of each periodic mechanical inspection	34 railroads	5,184.00 inspection records.	1 hour	5,184.00	59.89	310,469.76
—(e)(2) Detailed documentation of reliability assessments as basis for alternative inspection interval.	34 railroads	2.00 documents.	100 hours	200.00	77.44	15,488.00
238.311—Single car test—Tagging to indicate need for single car test.	34 railroads	50.00 tags	3 minutes	2.50	59.89	149.73
238.313(h)—Class I Brake Test—Record for additional inspection for passenger equipment that does not comply with § 238.231(b)(1).	34 railroads	15,600.00 records.	30 minutes	7,800.00	59.89	467,142.00
238.315(a)(1)—Class IA brake test—Notice to train crew that test has been performed (verbal notice).	The associated burdens related to briefings have been addressed previously when FRA calculated the economic costs of the regulation.					
—(f)(5) Communicating signal tested and operating as intended.	The associated burdens related to briefings have been addressed previously when FRA calculated the economic costs of the regulation.					
238.317—Class II brake test—Communicating signal tested and operating as intended.	The associated burdens related to briefings have been addressed previously when FRA calculated the economic costs of the regulation.					
238.321—Out-of-service credit—Passenger car: Out-of-use notation.	The estimated paperwork burden for this regulatory requirement is covered under § 238.307 and under OMB control number 2130–0004 under § 229.23(d)–(g).					
238.445(a)—Automated Monitoring—Performance monitoring: alerters/alarms.	There are no paperwork burdens associated with this subsection. FRA corrects its previous overinclusion.					
—(c) Monitoring system: Self-test feature: Notifications	There are no paperwork burdens associated with this subsection. FRA corrects its previous overinclusion.					
238.703—Quasi-static compression load requirements—Document to FRA on Tier III trainsets.	1 new railroad	.33 document	40 hours	13.20	77.44	1,022.21
238.705—Dynamic collision scenario—Model validation document to FRA for review and approval.	1 new railroad	.33 validation document.	40 hours	13.20	77.44	1,022.21
238.707—Override protection—Anti-climbing performance evaluation for Tier III trainsets.	1 new railroad	.33 evaluation	40 hours	13.20	77.44	1,022.21
238.709—Fluid entry inhibition—Information to demonstrate compliance with this section of a Tier III trainset.	1 new railroad	.33 analysis	20 hours	6.60	77.44	511.10
238.721—Glazing—Cab glazing; end facing—Documentation containing technical justification.	3 glass manufacturers.	.33 technical documentation.	60 hours	19.80	77.44	1,533.31
—(a)(6) Marking of end-facing exterior windows for Tier III trainsets.	Windows are, customarily, automatically marked during the production process. Therefore, there will be no additional burden to mark the windows.					

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [30]	Total cost equivalent (E) = C * D
—(b) Cab Glazing; side-facing exterior windows in Tier III cab—Each end-facing exterior window in a cab shall, at a minimum, provide ballistic penetration resistance that meets the requirements of appendix A to part 223 (Certification of Glazing Materials).	3 glass manufacturers.	.33 analysis	10 hours	3.30	77.44	255.55
—(b) Marking of side-facing exterior windows in Tier III Trainsets.	Windows are, customarily, automatically marked during the production process. Therefore, there will be no additional burden to mark the windows.					
—(c) Non-Cab Glazing; Side-facing exterior windows—Tier III—compliance document for Type II glazing.	3 glass manufacturers.	.33 analysis	20 hours	6.60	77.44	511.10
—(c) Marking of side-facing exterior windows—Tier III Trainsets—non-cab cars.	Windows are, customarily, automatically marked during the production process. Therefore, there will be no additional burden to mark the windows.					
—(c)(2) Alternative standard to FRA for side-facing exterior window intended to be breakable and serve as an emergency window exit (option to comply with an alternative standard).	3 glass manufacturers.	.67 alternative analysis.	5 hours	3.35	77.44	259.42
238.731(a)—Brake Systems—RR analysis and testing Tier III trainsets' maximum safe operating speed.	The estimated paperwork burden for this regulatory requirement is covered under § 238.111(a).					
—(d) Tier III trainsets' passenger brake alarm—legible stenciling/marking of devices with words ''Passenger Brake Alarm'' (Including the design of the sticker).	1 new railroad	53.33 stencilings.	1 hour (design) + 2 minutes (marking).	55.11	59.89	3,300.54
—(f) Main reservoir test/certification	1 new railroad	.33 certification	6 hours	1.98	59.89	118.58
—(h) Main reservoir tests—Inspection, testing and maintenance program (ITM).	1 railroad	.33 ITM plan ...	10 hours	3.30	77.44	255.55
—(j) Brake application/release—Brake actuator design with approved brake cylinder pressure as part of design review process.	1 railroad	.33 design	40 hours	13.20	77.44	1,022.21
—(o) Train securement—Tier III equipment: demonstrated securement procedure.	1 railroad	.33 procedure	8 hours	2.64	77.44	204.44
238.733—Interior fixture attachment—Analysis for FRA approval (Tier III).	1 railroad	.33 analysis/ document.	20 hours	6.60	77.44	511.10
238.735—Seat crashworthiness standard (passenger & cab crew)—Analysis for FRA approval (Tier III).	1 railroad	.33 analysis/ document.	40 hours	13.20	77.44	1,022.21
238.737—Luggage racks—Analysis for FRA approval (Tier III).	1 railroad	.33 analysis/ document.	20 hours	6.60	77.44	511.10
238.741—Emergency window egress and rescue access—Plan to FRA for passenger cars in Tier III trainsets not in compliance with sections 238.113 or 238.114.	1 railroad	.33 plan	60 hours	19.80	77.44	1,533.31
238.743—Emergency Lighting—Analysis for FRA approval (Tier III).	1 railroad	.33 analysis/ test.	60 hours	19.80	77.44	1,533.31
238.745—Emergency communication—Marking of each intercom intended for passenger use on Tier III trainsets as specified in § 238.121 (New requirement; note the existing burden associated with Tier I & Tier II trainsets is covered under OMB control no. 2130–0576).	3 railroads	277.00 marked intercom locations.	5 minutes	23.08	77.44	1,787.32
238.747—Emergency roof access for cab occupants—Marked emergency roof access locations on Tier III trainsets as specified in § 238.123(a), (d), and (e) (New requirement; note the existing burden associated with Tier I & Tier II trainsets is covered under OMB control no. 2130–0576).	3 railroads	104.00 marked emergency roof access locations.	30 minutes	52.00	77.44	4,026.88
238.751—Alerters—Alternate technology—Analysis for FRA approval (Tier III).	1 railroad	.33 analysis/ test.	40 hours	13.20	77.44	1,022.21
238.759—Trainset cab noise—Performance standards for Tier III trainsets—Recordkeeping on cab noise test protocol as set forth in appendix I to this part (New requirement).	3 railroads	1.00 record	5 minutes	.08	77.44	6.20
238.761—Trainset sanitation facilities for employees as specified in §§ 229.137 and 229.139—Defective locomotive toilet facility—Tagging, notation on daily inspection report (New requirement; note the existing burden associated with Tier I & Tier II trainsets is covered under OMB control no. 2130–0552).	FRA anticipates zero submissions for this 3-year ICR period.					
238.765—Event recorders (New requirement)	FRA anticipates zero railroad submissions during this 3-year ICR period.					
238.775—Trainset horn—Testing of the trainset horn sound level in accordance with § 229.129(c)—Written report and record retention (New requirement).	3 railroads	.33 written report.	1 hour	.33	77.44	25.56
238.777(e)(2)—Inspection Records—Copy of summary report made available to the engineer and to FRA upon request (New requirement).	FRA anticipates zero railroad submissions during this 3-year ICR period.					

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [30]	Total cost equivalent (E) = C * D
238.785—Trainset electrical system—High voltage markings: doors, cover plates, or barriers (New requirement).	FRA anticipates zero railroad submissions during this 3-year ICR period.					
238.791—Safety appliances (New requirement)	The estimated paperwork burden for this regulatory requirement is covered under §§ 238.110 (design) and 238.901 et seq. (records).					
238.903—Trainset Inspection, Testing, and Maintenance Requirements for Tier III Passenger Equipment—Program (New requirement).	3 railroads	.67 plan	150 hours	100.50	77.44	7,782.72
—(f) Retention of records	3 railroads	10,140.00 records.	5 minutes	845.00	77.44	65,436.80
238.907—Standard procedures for safely performing inspection, testing, and maintenance, and repairs (New requirement).	The estimated paperwork burden for this requirement is covered under § 238.903.					
238.909—Quality control/quality assurance program (New requirement).	The estimated paperwork burden for this requirement is covered under § 238.903.					
238.911—Inspection, testing, and maintenance program format—A condensed version of the program that contains only those items identified as safety-critical by the railroad submitted for approval by FRA (New requirement).	3 railroads	.67 condensed program.	2 hours	1.34	77.44	103.77
238.913(a)(1)—Inspection, testing, and maintenance program approval procedure—Initial submission (New requirement).	The estimated paperwork burden for this requirement is covered under § 238.903.					
—(a)(2) Inspection, testing, and maintenance program approval procedure—Submission of amendments (New requirement).	FRA anticipates zero railroad submissions during this 3-year ICR period.					
—(b)(3) Inspection, testing, and maintenance program approval procedure—Statement affirming that the railroad has provided a copy of the program or amendments on designated representatives of railroad employees as required under paragraph (c) of this section (New requirement).	3 railroads	.67 affirming statement.	5 minutes	.06	77.44	4.65
—(c) Inspection, testing, and maintenance program approval procedure—Comment—Railroad to provide a copy to the designated representatives of railroad employees responsible for the equipment's operation, inspection, testing, and maintenance under this subpart, of each submission filed with FRA (New requirement).	3 railroads	.33 comment	5 hours	1.65	77.44	127.78
—(d)(1) Inspection, testing, and maintenance program approval procedure—FRA's notification to railroads (New requirement).	3 railroads	.33 review of deficiency.	2 hours	.66	77.44	51.11
—(d)(2) Inspection, testing, and maintenance program approval procedure—Amendments in response to FRA's disapproval (New requirement).	FRA anticipates zero railroad submissions during this 3-year ICR period.					
—(d)(3) Inspection, testing, and maintenance program approval procedure—Resubmission of initial submission or amendments in response to FRA's identification of deficiencies after approval (New requirement).	The estimated paperwork burden for this requirement is covered above under paragraph (d)(1) of this section.					
—(e) Inspection, testing, and maintenance program approval procedure—Annual review—Railroad to provide written notice to FRA and the designated representatives of the railroad's employees prior to the annual review (New requirement).	FRA anticipates zero railroad submissions during this 3-year ICR period.					
238.1003(a)–(e)—Movement of defective Tier III passenger equipment—Tagging to indicate ''non-complying trainset'' (New requirement).	FRA anticipates zero railroad submissions during this 3-year ICR period.					
—(f) Movement of defective Tier III passenger equipment—Movement is made in accordance with the restrictions contained in the Special Notice under part 216 (New requirement).	FRA anticipates zero railroad submissions during this 3-year ICR period.					
Total [31]	37 railroads	4,871,540 Responses.	N/A	98,889	N/A	7,401,389

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits

comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Ms. Arlette Mussington, Information Collection Clearance Officer, at 571–609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at 757–897–9908. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them via email to Ms. Mussington at *arlette.mussington@dot.gov* or Ms. Swafford at *joanne.swafford@dot.gov*.

OMB is required to decide concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, Federalism,[32] requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply, and preparation of a federalism summary impact statement for the proposed rule is not required.

E. International Trade Impact Assessment

The Trade Agreements Act of 1979[33] prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

FRA has assessed the potential effect of this rulemaking on foreign commerce and believes that its proposed requirements are consistent with the Trade Agreements Act. The proposed requirements are safety standards, which, as noted, are not considered unnecessary obstacles to trade. Moreover, FRA has sought, to the extent practicable, to state the proposed requirements in terms of the performance desired, rather than in more narrow terms restricted to a particular design or system.

F. Environmental Impact

FRA has evaluated this proposed rule in accordance with the National Environmental Policy Act[34] (NEPA), the Council of Environmental Quality's NEPA implementing regulations,[35] and FRA's NEPA implementing regulations.[36] FRA has determined that this proposed rule is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS.[37] Specifically, FRA has determined that this proposed rule is categorically excluded from detailed environmental review.[38]

The main purpose of this rulemaking is to amend FRA's Passenger Equipment Safety Standards by adding safety standards to facilitate the safe implementation of high-speed rail at speeds up to 220 mph (Tier III). This rulemaking would not directly or indirectly impact any environmental resources and would not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review.[39] FRA has concluded that no such unusual circumstances exist with respect to this proposed rule and it meets the requirements for categorical exclusion.[40]

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties.[41] FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f).[42] Further, FRA reviewed this proposed rulemaking and found it consistent with Executive Order 14008, Tackling the Climate Crisis at Home and Abroad.[43]

[32] 64 FR 43255 (Aug. 10, 1999).

[33] 19 U.S.C. ch. 13.

[34] 42 U.S.C. 4321 *et seq.*

[35] 40 CFR parts 1500–1508.

[36] 23 CFR part 771.

[37] 40 CFR 1508.4

[38] See 23 CFR 771.116(c)(15) (categorically excluding ''[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise'').

[39] 23 CFR 771.116(b).

[40] 23 CFR 771.116(c)(15).

[41] *See* 54 U.S.C. 306108.

[42] *See* Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

[43] 86 FR 7619 (Feb. 1, 2021).

G. Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,[44] and DOT Order 5610.2C[45] require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations. FRA has evaluated this proposed rule under Executive Order 12898 and the DOT Order and has determined that it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

H. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this proposed rule in accordance with the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The proposed rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

I. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995,[46] each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act[47] further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This proposed rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

J. Energy Impact

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.''[48] FRA evaluated this proposed rule under Executive Order 13211 and determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

K. 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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

L. Analysis Under 1 CFR Part 51

As required by 1 CFR 51.5, FRA has summarized the standards it is proposing to incorporate by reference and shown the reasonable availability of those standards in the section-by-section analysis of this rulemaking document (see the discussions of §§ 238.139(c)(1)(i) and 238.745(b)). APTA standard PR–M–S–18–10 is currently approved for the location where is appears in the amendatory text; no change to the standard is proposed.

List of Subjects

49 CFR Part 216

Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 231

Railroad safety.

49 CFR Part 238

Incorporation by reference, Passenger equipment, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 216—SPECIAL NOTICE AND EMERGENCY ORDER PROCEDURES: RAILROAD TRACK, LOCOMOTIVE AND EQUIPMENT

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 49 U.S.C. 20102–20104, 20107, 20111, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

■ 2. Revise § 216.14(c) to read as follows:

§ 216.214 Special notice for repairs—passenger equipment.

* * * * *

(c) Railroad passenger equipment subject to a Special Notice may be moved from the place where it was found to be unsafe for further service to the nearest available point where the equipment can be repaired, if such movement is necessary to make the repairs. However, the movement is subject to the further restrictions of §§ 238.15 and 238.17, or § 238.1003 of this chapter.

PART 231—RAILROAD SAFETY APPLIANCE STANDARDS

■ 3. The authority citation for part 231 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20131, 20301–20303, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

[44] 59 FR 7629 (Feb. 16, 1994).

[45] Available at: *https://www.transportation.gov/sites/dot.gov/files/Final-for-OST-C-210312-003-signed.pdf.*

[46] Public Law 104–4, 2 U.S.C. 1531.

[47] 2 U.S.C. 1532.

[48] 66 FR 28355 (May 22, 2001).

■ 4. Add § 231.0(b)(6) to read as follows:

§ 231.0 Applicability and penalties.

* * * * *

(b) * * *

(6) Tier III passenger equipment as defined in § 238.5 of this chapter (*i.e.,* passenger equipment operating in a shared right-of-way at speeds not exceeding 125 mph and in an exclusive right-of-way without grade crossings at speeds exceeding 125 mph but not exceeding 220 mph).

* * * * *

PART 238—PASSENGER EQUIPMENT SAFETY STANDARDS

■ 5. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

Subpart A—General

■ 6. Amend § 238.5 by adding in alphabetical order definitions of ''clear length'', ''crew access side access steps'', ''representative segment of the route'', and ''Tier IV system'', and revising the definition of ''in service''. The additions and revision read as follows:

§ 238.5 Definitions.

* * * * *

Clear length means, as applied to handholds and handrails, the distance about which a minimum 2-inch hand clearance exists in all directions around the handhold or handrail. Intermediate supports on handrails may be considered part of the clear length.

* * * * *

Crew access side steps means a step(s) or stirrup(s) located on the side of the car to assist an employee in entering or existing through an exterior side door for train crew use.

* * * * *

In service, when used in connection with passenger equipment, means—

* * * * *

(2) * * *

(i) Is being handled in accordance with §§ 238.15, 238.17, 238.305(d), 238.503(f), or 238.1003 as applicable;

* * * * *

Representative segment of the route means—

(1) A continuous track section or multiple track sections no less than 50 miles in length that consist of—

(i) A curvature distribution as described below;

(ii) A segment or segments of tangent track over which the intended maximum operating speed can be sustained; and

(iii) Any bridges and special-trackwork that are within the track section or track sections.

(2) If each of a railroad's line segments is less than 50 miles, then the ''representative segment of the route'' means one complete line segment that consists of the conditions described in paragraphs (1)(ii) and (iii) of this definition.

(3) A track section as described under paragraph (1) of this definition shall have a curvature distribution that is within 2% of the curvature distribution of the complete line segment, evaluated using the root mean squared (RMS) of the differences between the two distributions.

* * * * *

Tier IV system means any railroad that provides or is available to provide passenger service using non-interoperable technology that operates on an exclusive right-of-way without grade crossings, not comingled with freight equipment or Tier I, II, or III passenger equipment, and not physically connected to the general railroad system.

* * * * *

■ 7. In § 238.19, revise paragraphs (a)(4) and (5), (b), and (d) to read as follows:

§ 238.19 Reporting and tracking of repairs to defective passenger equipment.

(a) * * *

(4) The determination made by a qualified person, qualified maintenance person, or other qualified individual on whether the equipment is safe to run;

(5) The name of the qualified person, qualified maintenance person, or other qualified individual making such a determination;

* * * * *

(b) *Retention of records.* At a minimum, each railroad shall keep the records described in paragraph (a) of this section in accordance with the following:

(1) For Tier I equipment, one periodic maintenance interval for each specific type of equipment as described in the railroad's inspection, testing, and maintenance plan required by § 238.107. FRA strongly encourages railroads to keep these records for longer periods of time because they form the basis for future reliability-based decisions concerning test and maintenance intervals that may be developed pursuant to § 238.307(b).

(2) For Tier III equipment, at least one year.

* * * * *

(d) *List of repair points.* (1) Railroads operating long-distance intercity and long-distance Tier II passenger equipment shall designate locations, in writing, where repairs to passenger equipment with a power brake defect will be made. Railroads operating these trains shall designate a sufficient number of repair locations to ensure the safe and timely repair of passenger equipment.

(2) Railroads operating Tier III passenger trainsets shall designate locations, in writing, where repairs to safety-critical items on passenger equipment, including those with a power brake defect will be made. The railroad shall designate brake system repair point(s) in the inspection, testing, and maintenance program required by § 238.903(a). No Tier III trainset shall depart a brake system repair point where repairs can be made with brake system defect unless that trainset has its required operational braking capability, and not for a period to exceed 5 consecutive calendar days.

(3) The railroad shall provide the list required under either paragraph (d)(1) or (2) of this section to FRA's Associate Administrator and make it available to FRA for inspection and copying upon request. The designations made in such lists shall not be changed without at least 30 days' advance written notice to FRA's Associate Administrator.

Subpart B—Safety Planning and General Requirements

■ 8. Amend § 238.105 by revising the undesignated introductory text, paragraphs (a), (b), (c), the paragraph headings of (d) and (e), and adding paragraphs (f) through (h). The revisions and additions read as follows:

§ 238.105 Passenger electronic hardware and software safety.

Except as provided below under paragraph (f) of this section, the requirements of this section apply to electronic hardware and software used to control or monitor safety functions in passenger equipment ordered on or after September 8, 2000, and such components implemented or materially modified in new or existing passenger equipment on or after September 9, 2002.

(a) *General.* The railroad shall develop, adopt, and comply with a hardware and software safety program to guide the design, development, testing, integration, and verification of safety-critical passenger equipment electronic software and hardware. The hardware and software safety program may be maintained in either a written or an electronic format.

(b) *Safety program.* The hardware and software safety program shall include a

description of how the following will be accomplished, achieved, carried out, or implemented to ensure safety and reliability:

(1) The hardware and software design process;

(2) The hardware and software design documentation;

(3) The hardware and software hazard analysis;

(4) Hardware and software safety reviews;

(5) Hardware and software hazard monitoring and tracking;

(6) Hardware and software integration safety testing;

(7) Demonstration of overall hardware and software system safety as part of the pre-revenue service testing of the equipment; and

(8) Safety analysis that follows the requirements of paragraph (c) of this section.

(c) *Safety analysis.* The safety analysis shall establish and document the minimum requirements that will govern the development and implementation of all products subject to this section, and be based on good engineering practice and should be consistent with the guidance contained in appendix F to part 229 of this chapter in order to establish that a product's safety-critical functions will operate with a high degree of confidence in a fail-safe manner. The hardware and software safety analysis shall be based on a formal safety methodology that includes a Failure Modes, Effects, Criticality Analysis (FMECA); verification and validation testing for all hardware and software components and their interfaces; and comprehensive hardware and software integration testing to ensure that the hardware and software system functions as intended.

(d) *Fail safe requirements.* * * *

(e) *Compliance.* * * *

(f) *Additional requirements.* The requirements of this paragraph are applicable as set forth under § 229.303(a)(1) and (2) of this chapter. In addition to complying with paragraphs (a) through (e) of this section, electronic hardware and software used to control or monitor safety functions in passenger equipment must also comply with only the following requirements of subpart E of part 229 of this chapter:

(1) Section 229.309(a)(1) through (6), Safety-critical changes and failures;

(2) Section 229.311(a), (c), and (d)(1) through (3), Review of SAs;

(3) Section 229.313, Product testing results and records;

(4) Section 229.315, Operations and maintenance manual;

(5) Section 229.317(a), Training and qualification program; and

(6) Section 229.319, Operating personnel training.

(g) *Vehicle Communication and Control System Vulnerability Assessment.* The railroad shall prepare a Vehicle Communication and Control System Vulnerability Assessment identifying potential system vulnerabilities, associated risk (including exploitation likelihood and consequences), countermeasures applied, and resulting risk mitigation. The PTC system must comply with the requirements in § 236.1033 of this chapter.

(h) *Notification of product failure.* Suppliers will notify FRA of all safety-critical product failures without undue delay.

■ 9. Add a new § 238.108 to read as follows:

§ 238.108 New passenger service pre-revenue safety performance demonstration.

(a) *Pre-revenue safety validation plan*—(1) *General.* Any railroad subject to this part providing new, regularly scheduled, intercity or commuter passenger service, an extension of existing service, or a renewal of service that has been discontinued for more than 180 days shall develop and submit for review a comprehensive pre-revenue service safety validation plan. Such plan shall include pertinent safety milestones and a minimum period of simulated revenue service to validate the safe integration of major systems and operational readiness, and that all safety-sensitive personnel are properly trained and qualified as outlined in this section.

(2) *Plan contents.* A pre-revenue safety validation plan shall be submitted to FRA 60 days prior to the commencement of the safety performance demonstration period containing, at a minimum, the following:

(i) The status of all appliable safety plans or regulatory programs, and any associated certifications, qualifications, and employee training required for the start of revenue service including, but not limited to, the following:

(A) Railroad workplace safety procedures, programs, and training pursuant to part 214 of this chapter;

(B) A drug and alcohol program pursuant to part 219 of this chapter;

(C) If required, information on the status of PTC certification or any request for amendment under part 236 of this chapter, and compliance with conditions and requirements of § 236.1015 of this chapter as required by the host railroad's PTC safety plan. If the railroad submitting the pre-revenue safety validation plan is not the host railroad, the host railroad must acknowledge in writing that all requisite testing, validation, or other conditions have been satisfactorily met for the use of the tenant's PTC system in revenue service;

(D) A bridge management program pursuant to part 237 of this chapter;

(E) Passenger equipment compliance validation and testing conducted pursuant to §§ 238.110 and 238.111;

(F) Inspection, testing, and maintenance programs, as required under this part;

(G) Emergency preparedness planning pursuant to part 239 of this chapter, with a focus on first responder outreach and employee training;

(H) Locomotive engineer and conductor training, qualification and certification programs under parts 240 and 242 of this chapter;

(I) Training, qualification, and oversight program for safety-related railroad employees under part 243 of this chapter, to include information and data indicating the number of safety-related employees required to receive training and qualification, and information regarding the roles and responsibilities of executing the program between the railroad and its contractors;

(J) A system safety program plan pursuant to part 270 of this chapter, with particular focus on the status of mitigations and actions associated with hazard logs and risk assessments that have a direct impact on the safety of the operation; and,

(K) Speed limit action plans required under 49 U.S.C. 20169, if applicable.

(ii) A detailed description of the completeness of the system. This description must, at a minimum, include completeness descriptions of the vehicles, signals, crossings, stations, train control systems, track structure, wayside systems, signage, rule books, and employee staffing. For any area that is not expected to be complete when the system performance demonstration period commences, the railroad must provide an explanation as to why completeness or substantial completeness is not necessary for the demonstration of safe operations. If the railroad submitting the pre-revenue safety validation plan is not the host railroad, the host railroad must provide the railroad submitting the pre-revenue safety validation plan pertinent information regarding any scheduled construction activities planned during the system performance demonstration period and their anticipated completion date. The railroad submitting the pre-revenue safety validation plan must then explain why completeness or

substantial completeness of the host railroad construction activities is not necessary for the demonstration of safe operations.

(iii) A detailed description of the operating plan including schedules, headways, equipment required, equipment staging locations, crew schedules, grade crossing locations, signal locations, timetable, general orders, special instructions, and other relevant information regarding the regular railroad operations. This description must also include a summary of the operating plan that includes, at a minimum, the number of vehicles required to operate the plan, the number of crewmembers per day, the number of round trips per crewmember, and the total number of trips per day.

(iv) The period of simulated service prior to revenue passenger service (expressed either in days or number of completed train trips) necessary to demonstrate operational readiness and reliability, to include successful completion of any safety-critical activities required (*e.g.,* crewmember training and qualification) and clear pass/fail criteria that, at a minimum, accounts for on-time performance, signal and crossing failures, and vehicle and on-board systems failures.

(b) *Safety performance demonstration period.* The railroad shall conduct a period of simulated service prior to revenue passenger service, with the specific period provided in the railroad's pre-revenue safety validation plan pursuant to paragraph (a)(2)(iv) of this section. During this period, the railroad shall demonstrate that all necessary infrastructure and systems (to include traction power, signals/train control, and dispatching), vehicles, wayside equipment, timetable, operating instructions, and training and familiarization are properly integrated and will safely operate in the operating environment and under the service demands for which they are intended. Prior to commencing the safety performance demonstration period, the railroad will have successfully completed pre-revenue service acceptance testing under § 238.111 and have obtained certification of its PTC system or approval of any requests for amendment under part 236 of this chapter, if required.

(1) *Simulated service requirements.* The railroad shall demonstrate the successful completion of the safety performance demonstration period in accordance with the pass/fail criteria required under paragraph (a)(2)(iv) of this section.

(i) For new passenger service or extension of existing service, the safety performance demonstration period must be conducted while executing the full schedule over the entire route utilizing all stations and systems intended to operate at the start of revenue passenger service. The period shall be of sufficient duration to demonstrate that all safety-related employees are properly trained and able to execute the railroad's programs and plans identified in paragraph (a)(2)(i) of this section. The railroad shall also demonstrate its ability to operate its planned schedule when speed restrictions, mandatory directives, or other common situations arise that may impact operations.

(ii) For the re-starting or permanent re-routing of existing service, the safety performance demonstration period may be conducted using a modified schedule or dedicated test trains accounting for crew and equipment availability. The period shall be of sufficient duration to demonstrate that all safety-related employees are properly trained and able to execute the railroad's programs and plans identified in paragraph (a)(2)(i) of this section, with particular attention to employees or groups of employees, who are not actively engaged in the existing operations.

(2) *Daily summary report.* During the safety performance demonstration period, the railroad will provide FRA a daily summary of the activities performed and results. Additionally, any delays, system failures, unexpected events, close calls, or other safety concerns shall be described in detail.

(3) *Final report.* The railroad shall correct any safety deficiencies identified during the safety performance demonstration period prior to commencing revenue service. If safety deficiencies cannot be corrected, the railroad shall impose appropriate mitigations or operational limitations on the operation of the railroad that are designed to ensure that the railroad can operate safely. Corrections, mitigations, or operational limitations shall be discussed in a final report to FRA addressing the complete safety performance demonstration period. FRA may require additional corrections, mitigations, or operational limitations to ensure the safety of the operation.

(c) *Compliance.* After submitting a plan pursuant to paragraph (a) of this section, the railroad shall adopt and comply with such plan and may not amend the plan without first notifying the Associate Administrator of the proposed amendment. Revenue service may not begin until the railroad has completed the requirements of its plan, including the minimum safety performance demonstration period required by the plan and correcting any safety deficiencies identified or, for deficiencies that cannot be corrected, imposing appropriate mitigations or operational limitations on the operation of the railroad that are designed to ensure that the railroad can operate safety, as required by paragraph (b)(3) of this section.

■ 10. Add § 238.110 to read as follows:

§ 238.110 Design criteria, testing, documentation, and approvals.

(a) *Scope.* Each railroad shall provide the pertinent design criteria and documentation, as defined within this section, to obtain required approvals for aspects of the design of passenger equipment subject to the requirements of this part prior to performance of on-site, dynamic acceptance testing under § 238.111 of this chapter.

(1) *Applicability.* Except for passenger equipment defined in paragraph (a)(2) of this section, the requirements of this section apply to all passenger equipment that qualifies under one of the following conditions:

(i) A passenger equipment design that has not been used in revenue service in the United States.

(ii) Rebuilt or modified passenger equipment where the carbody structure or any safety-critical elements have been modified or replaced by a new design not identical to the original component's design. Submittals shall be required only to verify the safe operations of the modified system/sub-system and any safety-critical systems affected by such change.

(2) *Previously accepted passenger equipment designs.* Except for paragraph (d) of this section, passenger equipment designs that are the same as passenger equipment designs previously used in the United States are not subject to the requirements of this section.

(b) *Documentation and recordkeeping.* (1) Railroads are required to obtain or develop; review; and evaluate all documentation in support of demonstrating compliance with the design and testing requirements of this section.

(2) The railroad shall retain a copy of the documentation required under paragraph (b)(1) of this section for the lifetime of the equipment and make it available to FRA for review upon request. If the equipment is leased or sold to another entity, a copy of the documentation shall be provided to the lessee or purchasing entity.

(c) *Vehicle qualification plan*—(1) *Plan content.* Prior to conducting any design reviews or tests, the railroad

shall develop a vehicle qualification plan that is comprised of the following:

(i) *System description and design assumptions.* As part of the vehicle qualification plan, the railroad shall include a description of the equipment's intended operating environment (system description) as detailed in paragraph (d)(1) of this section and a list of design assumptions. Railroads operating Tier III equipment must also address the required elements for Tier III operations as detailed in paragraph (d)(2) of this section.

(ii) *Compliance matrix.* In addition to the system description and design assumptions, the railroad shall develop and submit to FRA a compliance matrix identifying all safety requirements with which compliance must be demonstrated to include those requirements specified in paragraphs (e) and (f) of this section.

(2) *Approval of the vehicle qualification plan.* (i) The vehicle qualification plan shall be submitted by the railroad for FRA review at least 60 days before the first relevant design review and/or test. FRA shall notify the railroad within 30 days of receipt of the railroad's submission that the vehicle qualification plan is approved, disapproved or disapproved in part. The notification shall also identify those documents and/or tests that FRA will require to be submitted for review and approval.

(ii) If disapproved or disapproved in part, FRA shall explain the reason(s) on which the disapproval is based, and the measures needed to obtain approval. Upon receipt of notification by FRA of the disapproval or disapproval in part, the railroad shall revise the vehicle qualification plan to address the measures identified by FRA to obtain approval, and resubmit to FRA in accordance with paragraph (c)(2)(i) of this section.

(iii) The railroad shall adopt and comply with the approved vehicle qualification plan, including completion of all design review and/or testing required by the plan.

(d) *System description (operating environment) and design criteria.* The railroad shall maintain a system description to include relevant safety-critical elements affected by the intended operating environment. The system description shall identify common criteria, design assumptions, or other parameters that govern the design, maintenance, and safe operation of the equipment it operates, particularly as it relates to safety-critical features and systems.

(1) *Required elements common to all types of passenger equipment.* The following is a list of elements common to all railroad passenger equipment subject to this part.

(i) Infrastructure characteristics, to include governing or limiting geometry (including turnouts), maximum grade, minimum required braking or safe stopping distance, and rail or grinding profile (if maintained).

(ii) Systems integration elements, to include types of train control systems, types of signal systems, grade crossing system types, and traction power systems (if used).

(iii) Railroad operational parameters, to include alerter timing.

(2) *Required elements for Tier III operations.* The following is a list of elements specific to railroad passenger equipment used in Tier III operations. The railroad shall—

(i) Identify the assumptions used to calculate the worst-case braking adhesion conditions.

(ii) Specify the maximum designed braking capacity.

(iii) Identify the on-board locations where crewmembers can initiate an irretrievable emergency brake application.

(iv) Identify the on-board locations of passenger brake alarms.

(v) Specify the time period for train operations to remain under the full control of the engineer after a passenger brake alarm is activated.

(vi) Detail the manner or means used to confirm that the trainset has safely cleared the boarding platform in which the application of a passenger brake alarm will no longer immediately initiate an irretrievable emergency brake application.

(vii) Detail the railroad procedures to be followed and trainset controls that must be activated to retrieve the full-service brake application described in § 238.731(d)(5).

(viii) Identify and maintain the approved standard for designing and testing main reservoirs, in accordance with § 238.731(f).

(ix) Specify the parameters set by the railroad to determine if the wheel-slide protection system has failed to prevent wheel-slide.

(x) Provide the details of the brake system functionality, monitoring, and diagnostics and any corresponding safety analysis.

(xi) Identify the worst-case grade condition on which Tier III equipment must be effectively secured while unattended.

(xii) Specify the operational parameters under which the engineer must acknowledge the alerter in order for train operations to remain under the full control of the engineer.

(xiii) Provide the procedures to retrieve a full-service brake application as described in § 238.751(c).

(xiv) Provide an analysis that confirms the ability of the railroad's alternate technology to provide an equivalent level of safety if a standard alerter is not used.

(xv) Provide information on the use of the headlight dimming functionality for Tier III trainsets when operating on a dedicated right-of-way.

(xvi) Identify and maintain the approved standard procedure for use of flashing lights at public highway-rail grade crossings if an alternative to the flashing rate for auxiliary lights under § 238.769(b) is used.

(e) *Structural carbody crashworthiness compliance.* (1) *Carbody and component crashworthiness design.* New or modified passenger equipment structural carbody designs must demonstrate compliance with the minimum applicable crashworthiness requirements of parts 229 and 238 of this chapter. Designs that include crash-energy management (CEM) components must also comply with appendix J to this part. Compliance may be demonstrated by any of the following methods:

(i) Full-scale testing;

(ii) Quasi-static and dynamic analysis performed by a validated computer model supported by quasi-static test results; or

(iii) Engineering calculations.

(2) *Carbody and component crashworthiness compliance testing.* For any tests intended to be used for the purpose of demonstrating compliance with this section, the railroad must submit the following to FRA no later than 60 days prior to the start of testing:

(i) A test plan and associated procedures; and

(ii) Finite element analysis results.

(f) *Safety Appliances.* New or modified passenger equipment must be equipped with safety appliances according to the applicable requirements of this part. The railroad shall submit design review documentation in accordance with paragraph (g)(1) of this section for FRA review. Compliance shall be validated through a sample-equipment inspection in accordance with paragraph (g)(2) of this section.

(g) *Approval of design review documentation, tests, and inspections for Safety Appliances*—(1) *Design review, testing, and inspection documentation.*

(i) Design review, testing, or inspection documentation shall be submitted to FRA in advance for review.

FRA shall notify the railroad within 60 calendar days that the submission is approved, disapproved, or disapproved in part. If disapproved or disapproved in part, FRA shall explain the reason on which the disapproval is based, and the measures needed to obtain approval.

(ii) Upon receipt of notification by FRA of the disapproval or disapproval in part, the railroad shall revise the documentation to address the measures identified by FRA to obtain approval. The revised documentation shall be reviewed and approved in accordance with paragraph (g)(1)(i) of this section.

(2) *Sample-equipment inspection.* (i) The railroad shall request a sample-equipment inspection from FRA by—

(A) Notifying FRA with the first available date and location that the sample equipment can be inspected, which will be at least 45 days in advance of the inspection; and

(B) Submitting engineering drawings reflecting the design and configuration of the safety appliances, emergency systems and signage, and any other elements to be inspected as part of the sample-equipment inspection.

(ii) Should FRA take exception during the inspection, FRA will provide the railroad an inspection report documenting the exceptions taken within 30 days of the sample-equipment inspection. The railroad shall address all exceptions taken and then, if directed by FRA, request a reinspection pursuant to paragraph (g)(2)(i) of this section.

(iii) If the sample equipment conforms, then FRA will indicate that no exceptions are noted on the inspection report.

■ 11. Revise § 238.111 to read as follows:

§ 238.111 Pre-revenue service acceptance testing.

(a) *Passenger equipment designs that have not been used in revenue service in the United States.* Before using passenger equipment for the first time on its system that has not been used in revenue service in the United States, each railroad shall—

(1) *Pre-revenue service acceptance test plan contents.* Develop a pre-revenue service acceptance test plan for the equipment that, at a minimum, includes the following:

(i) A description of the passenger equipment, its physical characteristics, the version or type of safety-critical features installed (*e.g.,* type of brake system), and any other features that may be relevant to the testing to be conducted.

(ii) A description of the railroad, systems, and conditions against which the pre-revenue service acceptance test plan is intended to demonstrate safe operation in accordance with the railroad's system description and design criteria required under § 238.110(d). This includes the physical characteristics of the railroad, any known physical constraints (*e.g.,* clearance requirements), track geometry constraints (*i.e.,* turnouts), systems integration requirements, required alerter timing, and the minimum required stopping distance of the railroad pursuant to § 238.231(a), § 238.431(a), or § 238.731(b).

(iii) An identification of any approvals, qualifications, or waivers of FRA safety regulations required for the testing or for revenue service operation of the equipment.

(iv) An identification of the maximum speed and cant deficiency at which the equipment is intended to operate.

(v) A list of all tests to be conducted, indicating any interdependences or predecessor requirements that may exist, and a list of any testing of the equipment that has been previously performed.

(vi) A schedule for conducting the testing.

(vii) An identification of the applicable test procedures, test results or reports, and post-test analysis required by this part, corresponding to paragraph (a)(1)(v) of this section detailing the approach to verify—

(A) Safe vehicle-track system interaction in accordance with §§ 213.57, 213.329, 213.345, 238.139, or any applicable combination thereof.

(B) The brake system functional requirements and performance of the system and components in accordance with §§ 238.231, 238.431, or 238.731.

(C) That vehicle noise emission levels comply with part 210 of this chapter.

(D) That locomotive or trainset cab noise complies with §§ 229.121 or 238.759.

(E) Systems integration and compatibility with technology utilized on the routes the equipment is intended to operate over, to include—

(*1*) The signaling systems and track circuit technology over which the equipment will operate, to include ATC and PTC testing under part 236 of this chapter;

(*2*) The grade crossing warning system technology utilized; and

(*3*) Equipment inspection technology and defect detectors.

(2) *Pre-revenue service acceptance test plan submission.* Except as provided for under § 239.139(e), the pre-revenue service acceptance test plan shall be submitted for FRA review at least 30 days before the start of testing.

(3) *Test procedures.* Each test procedure shall include at a minimum the information contained in appendix K to this part.

(4) *Test procedure availability.* Test procedures utilized for compliance demonstration shall be made available to FRA upon request.

(5) *Compliance with test plan and procedures.* The railroad shall comply with its pre-revenue service acceptance test plan and associated test procedures, including fully executing the tests required by the plan.

(6) *Test results.* Except as required by §§ 213.57, 213.329, 213.345, or 238.139—

(i) Test results for Tier I equipment will be made available to FRA upon request.

(ii) Test results for Tier II and Tier III equipment shall be submitted to FRA at least 60 days prior to the equipment being placed in revenue service.

(7) *Correction of safety deficiencies.* The railroad shall correct any safety deficiencies identified in the design of the equipment or in the ITM procedures, discovered during the testing. If safety deficiencies cannot be corrected by design changes, the railroad shall impose operational limitations that are designed to ensure that the equipment can operate safely. For Tier II and Tier III passenger equipment, the railroad shall comply with any operational limitations imposed by the Associate Administrator on the revenue service operation of the equipment for cause stated following FRA review of the results of the test program under paragraph (a)(6)(ii) of this section. This section does not restrict a railroad from petitioning FRA for a waiver of a safety regulation under the procedures specified in part 211 of this chapter.

(8) *Approval.* For Tier II or Tier III passenger equipment, the railroad must obtain approval from the Associate Administrator before placing the equipment in revenue service. The Associate Administrator will grant such approval if the railroad demonstrates compliance with the applicable requirements of this part.

(b) *Passenger equipment design that has previously been used in revenue service in the United States.* (1) For passenger equipment design that has previously been used in revenue service in the United States, as defined in paragraph (b)(3) of this section, each railroad shall verify the applicability of previous tests performed under paragraphs (a)(1)(vii)(A) through (D) of this section and perform such tests if previous test data does not exist, cannot be obtained, or does not support

demonstration of safe operation within the intended operating environment.

(2) Retain a description of such testing and make such description available to FRA for inspection and copying upon request.

(3) For purposes of paragraph (b) of this section, passenger equipment design that has previously been used in revenue service in the United States means—

(i) The actual equipment used in such service;

(ii) Equipment manufactured identically to that actual equipment; and

(iii) Equipment manufactured similarly to that actual equipment with no material differences in safety-critical components or systems.

(c) *Modifications, new technology, and major upgrades.* Prior to implementing a modification, installing a new technology, and/or conducting a major upgrade to any system component or sub-system that impacts a safety-critical function on passenger equipment that has been used in revenue service in the United States, the railroad shall follow the procedures specified in paragraph (a) of this section prior to placing the equipment in revenue service with such modification, new technology, or major upgrade. Testing shall be required only to verify the safe operations of any safety-critical systems affected by such change.

■ 12. Add § 238.115(c) to read as follows:

§ 238.115 Emergency lighting.

* * * * *

(c) At an interval not to exceed 184 days, as part of the required periodic mechanical inspection, each railroad shall test a representative sample of the emergency lighting systems on its passenger cars to determine that they operate as intended when the cars are in revenue service. The sampling method must conform with a formalized, statistical test method.

■ 13. Revise § 238.131(a)(1) to read as follows:

§ 238.131 Exterior side door safety systems—new passenger cars and locomotives used in passenger service.

(a) * * *

(1) Be built in accordance with APTA standard PR–M–S–18–10. In particular, locomotives used in passenger service shall be connected to or interlocked with the door summary circuit to prohibit the train from developing tractive power if an exterior side door in a passenger car is not closed, unless the door is under the direct physical control of a crewmember for their exclusive use. APTA standard PR–M–S–18–10, ''Standard for Powered Exterior Side Door System Design for New Passenger Cars,'' approved February 11, 2011 is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated document from the American Public Transportation Association, 1666 K Street NW, Suite 1100, Washington, DC 20006 (telephone 202–496–4800; *www.apta.com*). You may inspect a copy of the document at the Federal Railroad Administration (FRA) and the National Archives and Records Administration (NARA), Contact FRA at: Docket Clerk, 1200 New Jersey Avenue SE, Washington, DC; *FRALegal@dot.gov; https://railroads.dot.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* Equipment with plug-type exterior side doors, section 2.9 (including section 2.9.1) of the APTA standard regarding the emergency release mechanism shall be replaced with the following requirements:

(i) Visual instructions for emergency operations of each plug-type exterior side door shall be provided. A manual interior and exterior emergency release mechanism shall be provided at each plug-type exterior side door. A clearly labeled emergency release mechanism, when activated, shall unlatch the door, disengage or unlock the local door isolation lock (if engaged), remove power from the door operator or controls, and allow the door to be moved to the open position. Feedback must be provided to the passenger to indicate that the mechanism has been actuated.

(ii) The emergency release mechanism shall not require the availability of electric or pneumatic power to activate. The emergency release actuation device shall be readily accessible, without the use of tools or another implement. The force necessary to actuate the interior emergency release mechanism shall not exceed 20 lbf. The force necessary to actuate the exterior emergency release mechanism shall not exceed 30 lbf using a lever type mechanism or 50 lbf using a ''T'' handle type mechanism. When actuated, the emergency release mechanism shall override any local door isolation locks, and it shall be possible to manually open the released door with a force not to exceed 35 lbf. The emergency release mechanism shall require a manual reset.

(iii) A speed interlock preventing operation of emergency release mechanism when vehicle is moving is permitted.

* * * * *

■ 14. Add § 238.139 to read as follows:

§ 238.139 Vehicle/track system qualification.

Pursuant to a railroad's pre-revenue service acceptance test plan under § 238.111, a railroad must demonstrate that its equipment does not exceed the safety limits of § 213.333 of this chapter. A railroad may demonstrate compliance by measuring the carbody and truck accelerations in accordance with § 213.333 over the entirety of the territory the vehicle is intended to operate, or by complying with the below enumerated requirements of this section. Nothing in this section affects a railroad's responsibility to comply with § 213.345 of this chapter.

(a) *General.* Qualification testing shall demonstrate that the vehicle/track system will not exceed the wheel/rail force safety limits and the carbody and truck acceleration criteria specified in § 213.333 of this chapter—

(1) Up to and including 5 mph above the proposed maximum operating speed; and

(2) On track meeting the requirements for the class of track associated with the proposed maximum operating speed. For purposes of qualification testing, speeds may exceed the maximum allowable operating speed for the class of track in accordance with the test plan approved by FRA under § 238.111.

(b) *Existing vehicle type qualification.* Except as otherwise provided by FRA, vehicle types previously qualified or permitted to operate prior to (INSERT DATE OF PUBLICATION OF FINAL RULE), shall be deemed qualified under the requirements of this section for operation at the previously operated speeds and cant deficiencies. However, equipment deemed meeting the requirements of this section pursuant to this paragraph (b) does not have transferability of qualification.

(c) *New vehicle type qualification.* Vehicle types that were not previously qualified under this section, or deemed qualified under paragraph (b) of this section, shall be qualified in accordance with the following:

(1) *Qualification methods.* To demonstrate that new vehicle types will not exceed the wheel/rail force safety limits and the carbody and truck acceleration criteria specified in § 213.333—

(i) When operated over Class 1 track, the vehicle type shall demonstrate the ability to negotiate a 12-degree curve with a coefficient of friction representative of dry track conditions

(*i.e.,* 0.5) and 3-inch track warp variations with the following wavelengths: 10, 20, 40, and 62 feet. The demonstration shall be done by simulating such track geometry conditions at speeds up to 5 mph above track Class 1 speeds, and the suspension system(s) shall meet the APTA truck equalization standard, APTA PR–M–S–014–06. The results of the simulation under both the AW0 and AW3 loading conditions shall not exceed the wheel/rail forces safety limits specified in § 213.333 of this chapter.

(ii) When operated over track Classes 2 through 5 at speeds producing no more than 6 inches of cant deficiency, the vehicle type shall be qualified by simulations performed under paragraph (c)(2) of this section and the measurement of carbody and truck accelerations during qualification testing in accordance with paragraphs (c)(3) and (4) of this section. If successful, the testing shall result in a transferable qualification with respect to the requirements of this section so long as the equipment is used at the same track class and cant deficiency.

(iii) APTA PR–M–S–014–06, Rev. 1, ''Standard for Wheel Load Equalization of Passenger Railroad Rolling Stock,'' Authorized June 1, 2017, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at FRA and at the National Archives and Records Administration (NARA). Contact FRA at: Federal Railroad Administration Docket Clerk, 1200 New Jersey Avenue SE, Washington, DC; *FRALegal@dot.gov; https://railroads.dot.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material is also available from the American Public Transportation Association, 1666 K Street NW, Washington, DC 20006; *www.apta.com.*

(2) *Simulations.* (i) Analysis of vehicle/track performance (computer simulations) shall be conducted using an industry recognized methodology on—

(A) Minimally compliant analytical track (MCAT) conditions for the respective track class(es) as specified in appendix C to this part; and

(B) A track segment representative of the full route on which the vehicle type is intended to operate. Both simulations and physical examinations of the route's track geometry shall be used to determine a track segment representative of the route.

(ii) Linear system analysis shall be performed to identify the frequency and damping of the truck hunting modes. It shall be demonstrated that the damping of these modes is at least 5 percent, up to the intended operating speed +5 mph considering equivalent conicities starting at 0.1 up to 0.6.

(3) *Carbody acceleration.* For vehicle types intended to operate at track Class 2 through 5 speeds and up to 6 inches of cant deficiency, qualification testing conducted over a representative segment of the route on which the vehicle type is intended to operate shall demonstrate that the vehicle type will not exceed the carbody lateral and vertical acceleration safety limits specified in § 213.333 of this chapter.

(4) *Truck lateral acceleration.* For vehicle types intended to operate at track Class 2 through 5 speeds and up to 6 inches of cant deficiency, qualification testing conducted over a representative segment of the route on which the vehicle type is intended to operate shall demonstrate that the vehicle type will not exceed the truck lateral acceleration safety limit specified in § 213.333 of this chapter.

(d) *Previously qualified vehicle types.* Vehicle types previously qualified by simulation and testing in accordance with paragraph (c) of this section for a track class and cant deficiency on one route may be qualified for operation at the same class and cant deficiency on another route in accordance with the following:

(1) Vehicle types previously qualified by simulation and testing in accordance with paragraph (c) of this section on one route shall not require additional simulations, testing, or approval so long as operated on routes with the same track class designation and at the same or lower cant deficiency.

(2) For vehicle types intended to operate at speeds not to exceed Class 6 track or at any curving speed producing more than 5 inches of cant deficiency, but not exceeding 6 inches, qualification testing conducted over a representative segment of the new route shall demonstrate that the vehicle type will not exceed the carbody lateral and vertical acceleration safety limits specified in § 213.333 of this chapter.

(3) Vehicle types previously qualified by testing alone shall be subject to the requirements of paragraph (c) of this section for new equipment.

(e) *Qualification testing plan.* To obtain the data required to support the qualification program outlined in paragraphs (c) and (d) of this section, the track owner or railroad shall submit a qualification testing plan to FRA's Associate Administrator at least 60 days prior to testing, requesting approval to conduct the testing at the desired speeds and cant deficiencies. This test plan shall provide for a test program sufficient to evaluate the operating limits of the track and vehicle type and shall include—

(1) Identification of the representative segment of the route on which the vehicle type is intended to operate for qualification testing;

(2) Consideration of the operating environment during qualification testing, including operating practices and conditions, the signal system, highway-rail grade crossings, and trains on adjacent tracks;

(3) The maximum angle found on the gage face of the designed (newly profiled) wheel flange referenced with respect to the axis of the wheelset that will be used for the determination of the Single Wheel L/V Ratio safety limit specified in § 213.333 of this chapter when conducting simulations in accordance with (c)(2) of this section;

(4) A target maximum testing speed in accordance with paragraph (a) of this section and the maximum testing cant deficiency; and

(5) The results of vehicle/track performance simulations that are required by this section.

(f) *Qualification testing.* Upon FRA approval of the qualification testing plan, qualification testing shall be conducted in two sequential stages as required in this subpart.

(1) Stage-one testing shall include demonstration of acceptable vehicle dynamic response of the subject vehicle as speeds are incrementally increased—

(i) On a segment of tangent track, from maximum speeds corresponding to each track class to the target maximum test speed; and

(ii) On a segment of curved track, from the speeds corresponding to 3 inches of cant deficiency to the maximum testing cant deficiency.

(2) When stage-one testing has successfully demonstrated a maximum safe operating speed and cant deficiency, stage-two testing shall commence with the subject vehicle over a representative segment of the route as identified in paragraph (e)(1) of this section. A round-trip test run shall be conducted over the representative route segment at the speed the railroad will request FRA to approve for such service. An additional round-trip test run shall be conducted at 5 mph above this speed. The equipment shall be oriented differently in each leg of the round-trip test run.

(3) When conducting stage-one and stage-two testing, if any of the monitored safety limits are exceeded on

any segment of track, testing may continue provided that the track location(s) where any of the limits is exceeded be identified and test speeds be limited at the track location(s) until corrective action is taken. Corrective action may include making an adjustment in the track, in the vehicle, or in both of these system components.

(4) Prior to the start of the qualification testing program, a qualifying Track Geometry Measurement System (TGMS) specified in § 213.333 of this chapter shall be operated over the intended route within 30 calendar days prior to the start of the qualification testing program.

(g) *Qualification testing results.* The track owner or railroad shall submit a report to FRA's Associate Administrator detailing all the results of the qualification program. When simulations are submitted as part of vehicle qualification, this report shall include a comparison of simulation predictions to the acceleration data recorded during full-scale testing. The report shall be submitted at least 60 days prior to the intended operation of the equipment in revenue service over the route.

(h) *Approvals.* (1) Based on the test results and all other required submissions, FRA will approve, for new vehicle types qualified per paragraph (c) of this section, a maximum train speed and value of cant deficiency for revenue service, normally within 45 days of receipt of all the required information. FRA may impose conditions necessary for safely operating at the maximum approved train speed and cant deficiency.

(2) Previously qualified vehicle types operating at track Class 2 through 5 speeds, or at curving speeds producing up to 6 inches of cant deficiency, on one route may be qualified and approved for operation at the same class and cant deficiency on another route provided the vehicle types have been previously qualified by simulation and testing in accordance with paragraph (c) of this section for the same track class and cant deficiency.

(i) *Document retention.* The documents required by this section must be provided to FRA by:

(1) The track owner; or

(2) A railroad that provides service with the same vehicle type over trackage of one or more track owner(s), with the written consent of each affected track owner.

Subpart C—Specific Requirements for Tier I Passenger Equipment

■ 15. Revise § 238.201(a)(1) to read as follows:

§ 238.201 Scope/alternative compliance.

(a) * * *

(1) This subpart contains requirements for railroad passenger equipment operating at speeds not exceeding 125 miles per hour. All such passenger equipment remains subject to the safety appliance requirements contained in Federal statute at 49 U.S.C. chapter 203 and in applicable FRA regulations in this part 238, at part 231, and § 232.3 of this chapter. Unless otherwise specified, these requirements only apply to passenger equipment ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002.

* * * * *

■ 16. Revise § 238.230(a) to read as follows:

§ 238.230 Safety appliances—new equipment.

(a) *Applicability.* Except as provided in § 238.791, this section applies to passenger equipment placed in service on or after January 1, 2007.

* * * * *

■ 17. Revise § 238.235 to read as follows:

§ 238.235 Safety appliances for non-passenger carrying locomotives used in passenger service.

(a) *Application.* The requirements of this section apply to all non-passenger carrying locomotives, used in passenger service, that specifically utilize monocoque, semi-monocoque, or are a cowl unit, built on or after (INSERT EFFECTIVE DATE OF FINAL RULE), unless the requirements of part 231 of this chapter are applied.

(b) *Attachment.* All safety appliances shall be securely fastened to the car body structure and meet the requirements of § 238.791(b).

(c) *Fatigue life.* The safety appliance, the support or bracket to which the safety appliance is attached, and the carbody structure to which the safety appliance is directly attached or the support or bracket is attached, shall be designed for a fatigue life as specified under § 238.791(c).

(d) *Handholds.* Handholds used on non-passenger carrying locomotives subject to this section shall meet the applicable requirements of § 238.791(d).

(e) *Sill steps.* Sill steps used on non-passenger carrying locomotives subject to this section shall meet the applicable requirements of § 238.791(e).

(f) *Ground level access to the locomotive cab and other carbody side doors.* Non-passenger carrying locomotives subject to the requirements of this section shall be equipped with appropriate safety appliances at exterior side locomotive cab access doors and other carbody side doors, to permit safe access to the locomotive cab by employees and other authorized personnel from ground level.

(1) *Handholds.* Each exterior locomotive cab side access door that provide access to the locomotive cab shall be equipped with two vertical handholds, one on each side of the door, which shall—

(i) Have a minimum diameter of 5/8 inch.

(ii) Have a distance from the bottom clear length of the vertical handholds not to exceed 54 inches above top of rail.

(iii) Be installed so as to have a clear length extending at least 60 inches, or as high as practicable based on carbody design, above the floor of the cab. The design shall enable a person to safely turn around in order to exit the trainset. A smaller handhold, providing at least 16 inches clear length, may be installed above the exterior cab access door opening on the inside of the equipment to facilitate a person's ability to safely turn around.

(iv) Have a clearance distance between the vehicle body of a minimum of 2 inches, preferably 2½ inches for the entire length, except when a combination of handholds, additional attachment points, or both, are necessary due to the carbody design, length of the handhold, or both.

(2) *Steps.* Exterior side doors that provide access to the locomotive cab shall be equipped with steps meeting the requirements of § 238.791(e)(2) and (3).

(g) *Couplers.* Couplers used on non-passenger carrying locomotives subject to this section shall comply with the requirements of § 238.791(g).

(h) *Uncoupling levers or devices.* (1) *General.* Each end of a non-passenger carrying locomotive subject to the requirements of this section equipped with an automatic coupler required by paragraph (g) of this section shall have either—

(i) A manual, double-lever type uncoupling lever, operative from either side of the locomotive; or

(ii) An uncoupling mechanism operated by controls located in the locomotive cab, or other secure location. Additional manual uncoupling levers or handles on the coupler provided only as a backup for that remotely operated mechanism are not subject to paragraph (h)(2) of this section.

(2) *Manual uncoupling lever or device.* Manual uncoupling levers shall be applied so that the automatic coupler can be operated from either side of the equipment, from ground level without

requiring a person to go between cars or equipment units. Manual uncoupling levers shall have a minimum clearance of 2 inches, preferably 2½ inches, around the handle.

(i) *Shrouding.* The automatic coupler, end handholds, and uncoupling mechanism on the leading and trailing ends of a non-passenger carrying locomotive may be stored within a removable shroud to reduce aerodynamic effects.

(j) *Hand brakes.* Non-passenger carrying locomotives subject to the requirements of this section shall be equipped with an efficient hand or parking brake capable of holding the locomotive on the maximum grade condition identified by the operating railroad, or a minimum 3% grade, whichever is greater.

(k) *Safety appliances for appurtenances and windshields.* (1) Non-passenger carrying locomotives subject to the requirements of this section having appurtenances such as headlights, windshield wipers, marker lights, and other similar items required for the safe operation of the trainset or trainset unit must be equipped with handholds and steps meeting the requirements of this section if the appurtenances are designed to be maintained or replaced from the exterior of the trainset or equipment.

(2) The requirements of paragraph (k)(1) of this section do not apply if railroad operating rules require, and actual practice entails, the maintenance and replacement of these components by maintenance personnel in locations protected by the requirements of subpart B of part 218 of this chapter equipped with ladders and other tools to safely repair or maintain those appurtenances.

(l) *Optional safety appliances.* Safety appliances installed at the option of the railroad shall be approved by FRA pursuant to § 238.110.

Subpart H—Specific Requirements for Tier III Passenger Equipment

■ 18. Amend subpart H to part 238 by removing undesignated center headings ''Trainset Structure'', ''Glazing'', ''Brake System'', ''Interior Fittings and Surfaces'', ''Emergency Systems'', and ''Cab Equipment''.

■ 19. Revise § 238.701 to read as follows:

§ 238.701 Scope.

This subpart contains specific requirements for railroad passenger equipment operating in a shared right-of-way at speeds not exceeding 125 mph and in an exclusive right-of-way without grade crossings at speeds exceeding 125 mph but not exceeding 220 mph. Passenger seating is permitted in the leading unit of a Tier III trainset if the trainset complies with the crashworthiness and occupant protection requirements of this subpart, and the railroad has an approved right-of-way plan under § 213.361 of this chapter and an approved HSR–125 plan under § 236.1007(c) of this chapter. Demonstration of compliance with the requirements of this subpart is subject to FRA review and approval under §§ 238.110 and 238.111.

■ 20. Add § 238.719 to read as follows:

§ 238.719 Trucks and Suspension.

(a) *General requirements.* (1) Suspension systems shall be designed to reasonably prevent wheel climb, wheel unloading, rail rollover, rail shift, and a vehicle from overturning to ensure safe, stable performance and ride quality under the following conditions:

(i) In all operating environments as defined by the railroad under §§ 238.110(d) and 238.111(a)(1)(ii); and

(ii) At all track speeds and over all track qualities consistent with the Track Safety Standards in part 213 of this chapter, up to the maximum operating speed and maximum cant deficiency for which the equipment is qualified.

(2) All passenger equipment shall meet the safety standards for suspension systems contained in part 213 of this chapter, or alternative standards providing at least equivalent safety if approved by FRA under the provisions of § 238.21. In particular—

(i) *Pre-revenue service qualification.* All passenger equipment shall demonstrate safe operation during pre-revenue service qualification in accordance with § 213.345 of this chapter and is subject to the requirements of § 213.329 of this chapter.

(ii) *Revenue service operation.* All passenger equipment in service is subject to the requirements of §§ 213.329 and 213.333 of this chapter.

(b) *Carbody acceleration.* A passenger car shall not operate under conditions that result in a steady-state lateral acceleration greater than 0.15g, as measured parallel to the car floor inside the passenger compartment. Additional carbody acceleration limits are specified in § 213.333 of this chapter.

(c) *Lateral truck accelerations (hunting).* Each trainset shall be equipped with a system capable of detecting hunting on all trucks as defined in § 213.333 of this chapter (criteria based on reference location defined in § 213.333(k)(2) of this chapter). If truck hunting is detected, the train monitoring system shall provide an alarm to the controlling cab, and the train shall be slowed to a speed at least 5 mph less than the speed at which the truck hunting stopped.

(d) *Wheelsets.* Unless further clarified in the railroad's approved ITM plan, each trainset shall comply with the following limits and be free of the following defective conditions:

(1) The distance between the inside gauge of the flanges on non-wide flange wheels may not be less than 53$^{3}/_{32}$ inches or more than 53⅜ inches.

(2) The distance between the inside gauge of the flanges on wide flange wheels may not be less than 53 inches or more than 53$^{3}/_{32}$ inches.

(3) The back-to-back distance of flanges of wheels mounted on the same axle shall not vary more than ¼ inch when measured at similar points around the circumference of the wheels.

■ 21. Add § 238.723 to read as follows:

§ 238.723 Pilots, Snowplows, End Plates.

Each lead vehicle must be equipped with a pilot, snowplow, or end plate that extends across both rails. The minimum clearance above the rail of the pilot, snowplow, or end plate is 3 inches. In general, the maximum clearance is 6 inches. For a lead vehicle equipped with an obstacle deflector or truck-mounted wheel guard (or both) to minimize the risk of derailment from substantial obstacles that pass beneath them and into the path of the wheels, the maximum clearance is 9 inches.

■ 22. Add § 238.725 to read as follows:

§ 238.725 Overheat sensors.

Overheat sensors for each wheelset journal bearing shall be provided. The sensors may be placed either onboard the equipment or at reasonable intervals along the railroad's right-of-way.

■ 23. Add § 238.745 to read as follows:

§ 238.745 Emergency communication.

(a) Except as provided in paragraph (b) of this section, Tier III trainsets shall comply with the emergency communication requirements specified in § 238.121.

(b) Emergency communication back-up power systems shall, at a minimum, be capable of operating after experiencing the individually applied accelerations defined in either of the following paragraphs:

(1) Section 238.121(c)(2); or

(2) Section 6.1.4, ''Security of furniture, equipment and features,'' of GM/RT2100, provided that—

(i) The conditions of § 238.705(b)(2) are met;

(ii) The initial shock of a collision or derailment is based on a minimum load of 5g longitudinal, 3g lateral, and 3g vertical; and

(iii) Use of the standard is carried out under any conditions identified by the railroad, as approved by FRA.

(c) Railway Group Standard GM/RT2100, Issue Four, ''Requirements for Rail Vehicle Structures,'' December 2010, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Federal Railroad Administration (FRA) and the National Archives and Records Administration (NARA). Contact FRA at: Federal Railroad Administration Docket Clerk, 1200 New Jersey Avenue SE, Washington, DC; *FRALegal@dot.gov; https://railroads.dot.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* It is available from Rail Safety and Standards Board Ltd., Communications, RSSB, Block 2 Angel Square, 1 Torrens Street, London, England EC1V 1NY; *www.rgsonline.co.uk.*

■ 24. Add § 238.747 to read as follows:

§ 238.747 Emergency roof access.

Each cab of a Tier III trainset shall have an emergency roof access location for crewmembers occupying the cab, unless the crewmembers have direct access to an emergency roof access point located in a passenger compartment of the trainset. Each emergency roof access location shall have a minimum opening of 26 inches longitudinally by 24 inches laterally and comply with the emergency roof access requirements specified in § 238.123(b), (d), and (e).

■ 25. Add § 238.755 to read as follows:

§ 238.755 General safety requirements.

(a) *Protection against personal injury.* Tier III trainsets shall comply with § 229.41 of this chapter.

(b) *General condition.* All systems and components on a trainset shall be free of conditions that endanger the safety of the passengers, crew, or equipment. Such conditions may include those conditions listed in § 229.45 of this chapter, but are not limited thereto.

(c) *Control of multiple trainsets.* Except when a trainset is moved in accordance with § 238.1003, when multiple trainsets are coupled in remote- or multiple-control, the railroad will comply with the requirements of § 229.13 of this chapter.

■ 26. Add § 238.757 to read as follows:

§ 238.757 Cabs, floors, and passageways.

(a) *Cab doors.* Tier III trainset cab doors shall be equipped with a secure and operable device to lock the door from the outside that does not impede egress from the cab and a securement device that is capable of securing the door from inside of the cab.

(b) *End-facing cab windows.* End-facing cab windows of the lead trainset cab shall be free of cracks, breaks or other conditions that obscure the view of the right-of-way for the crew from their normal position in the cab.

(c) *Cab floors, passageways, and compartments.* Tier III trainsets will comply with § 229.119(c) of this chapter.

(d) *Cab climate control.* Each lead cab in a Tier III trainset shall be heated and air conditioned. The heating, ventilation, and air conditioning system shall be inspected and maintained to ensure that it operates properly and meets the railroad's performance standard which shall be defined in the inspection, testing, and maintenance program.

■ 27. Add § 238.759 to read as follows:

§ 238.759 Trainset cab noise.

(a) *Performance standards for Tier III trainsets.* (1) The average noise levels in the trainset cab shall be less than or equal to 85 dB(A) when the trainset is operating at maximum operating speed. Compliance shall be demonstrated during the trainset qualification testing as required by § 238.111.

(2) A railroad shall not make any alterations during maintenance, or otherwise modify the cab, to cause the average sound level to exceed the requirements in paragraph (a)(1) of this section.

(3) The railroad or manufacturer shall follow the test protocols set forth in appendix I to this part to determine compliance with paragraph (a)(1) of this section and, to the extent reasonably necessary to evaluate the effect of alterations during maintenance, to determine compliance with paragraph (a)(2) of this section.

(b) *Maintenance of trainset cabs.* (1) If a railroad receives an excessive-noise report, and if the condition giving rise to the noise is not required to be immediately corrected under this part, the railroad shall maintain a record of the report, and repair or replace the item or component identified as substantially contributing to the noise—

(i) On or before the next periodic inspection required by the railroad's inspection, testing, and maintenance program; or

(ii) At the time of the next major equipment repair commonly used for the particular type of maintenance needed if the railroad determines that the repair or replacement of the item or component requires significant shop or material resources that are not readily available.

(2) A railroad has an obligation to respond to an excessive noise report filed by a trainset cab occupant. The railroad meets its obligation to respond to an excessive noise report, as set forth in paragraph (b)(1) of this section, if the railroad makes a good faith effort to identify the cause of the reported noise, and where the railroad is successful in determining the cause, if the railroad repairs or replaces the items that cause the noise.

(3)(i) A railroad shall maintain a written or electronic record of any excessive noise report, inspection, test, maintenance, and replacement or repair completed pursuant to paragraph (b) of this section, and the date on which that inspection, test, maintenance, and replacement or repair occurred. If a railroad elects to maintain an electronic record, the railroad must satisfy the conditions listed in § 227.121(a)(2)(i) through (v) of this chapter.

(ii) The railroad shall retain these records for a period of one year.

(iii) The railroad shall establish an internal, auditable, monitorable system that contains these records.

■ 28. Add § 238.761 to read as follows:

§ 238.761 Trainset sanitation facilities for employees.

(a) Tier III trainsets that are equipped with a sanitation compartment, as this term is defined in § 229.5 of this chapter, accessible only to train crewmembers shall meet the requirements set forth in § 229.137 of this chapter, and be maintained to the requirements of § 229.139 of this chapter.

(b) Railroads that do not provide sanitation compartments solely for use by crewmembers on board Tier III trainsets shall provide an alternate arrangement in accordance with § 229.137(b)(1)(i) of this chapter.

■ 29. Add § 238.763 to read as follows:

§ 238.763 Speed indicator.

(a) Each trainset controlling cab shall be equipped with a speed indicator which is—

(1) Accurate within ±1.24 mph for speeds under 18.6 mph, then increasing linearly up to ±5 mph at 220 mph; and

(2) Clearly readable from the engineer's normal position under all light conditions.

(b) The speed indicator shall be based on a system of independent on-board speed measurement sources guaranteeing the accuracy level specified in paragraph (a)(1) of this section under all operational conditions.

The system shall be automatically monitored for inconsistencies and the engineer shall be automatically notified of any inconsistency potentially compromising this accuracy level.

(c) The speed indicator shall be calibrated periodically as defined in the railroad's inspection, testing, and maintenance program.

■ 30. Add § 238.765 to read as follows:

§ 238.765 Event recorders.

(a) *Duty to equip and record.* Except as provided in paragraphs (c) and (d) of this section, a trainset shall have an in-service event recorder, of the type described in paragraph (b)(2) of this section, to record data from the lead cab and other locations within the trainset. The event recorder shall record the most recent 48 hours of operational data of the trainset on which it is installed.

(b) *Equipment requirements.* (1) Event recorders shall monitor and record data elements or information needed to support the data elements required by this paragraph with at least the accuracy required of the indicators displaying any of the required data elements to the engineer.

(2) A trainset shall be equipped with an event recorder with a certified crashworthy event recorder memory module that meets the requirements of appendix D to part 229 of this chapter. The certified crashworthy event recorder memory module shall be mounted for its maximum protection. (Although other mounting standards may meet this requirement, an event recorder memory module mounted in a non-crush zone area of the trainset and above the platform level is deemed appropriate ''for its maximum protection.'') The event recorder shall record, and the certified crashworthy event recorder memory module shall retain, the data elements or information needed to support the data elements as specified in § 229.135(b)(4)(i) through (xv), (xvii), (xx), and (xxi). In addition, the event recorder shall record, and the certified crashworthy event recorder memory module shall retain, the following data elements or information needed to support the following data elements:

(i) Application and operation of the eddy current brake, if so equipped;

(ii) Passenger brake alarm request;

(iii) Passenger brake alarm override;

(iv) Bell activation; and

(v) Trainset brake cylinder pressures.

(c) *Removal from service.* Notwithstanding the duty established in paragraph (a) of this section to equip trainsets with an in-service event recorder, a railroad may remove an event recorder from service. If a railroad knows that an event recorder is not monitoring or recording required data, the railroad shall remove the event recorder from service. When a railroad removes an event recorder from service, a qualified person shall record the date that the device was removed from service in the trainset's maintenance records, required in accordance with § 238.777.

(d) *Response to defective equipment.* Notwithstanding the duty established in paragraph (a) of this section to equip Tier III trainsets with an in-service event recorder, a trainset on which the event recorder has been taken out of service as provided in paragraph (c) of this section may remain in service only until the next pre-service inspection, as required by § 238.903(c)(2). A trainset with an inoperative event recorder is not deemed to be in improper condition, unsafe to operate, or a non-complying trainset under § 238.1003, and, other than the requirements of appendix D to part 229 of this chapter, the inspection, testing, and maintenance of event recorders are limited to the requirements set forth in subpart I of this part.

(e) *Preserving accident data, relationship to other laws, and disabling event recorders.* In addition to the requirements of paragraphs (a) through (d) of this section, § 229.135(e) through (g) of this chapter apply to Tier III trainset event recorders.

(f) *Annual test.* At a minimum, event recorders shall be tested at intervals not to exceed 368 days in accordance with § 229.27(c) of this chapter.

■ 31. Add § 238.767 to read as follows:

§ 238.767 Headlights.

(a) Except as provided in paragraphs (c) and (d) of this section, each end of a Tier III trainset shall be equipped with a headlight comprised of at least two lamps, one of which shall be illuminated when the trainset is in use. Each lamp, when illuminated, shall comply with the angular, intensity, and illumination requirements of § 229.125(a) of this chapter.

(b) The leading unit of a trainset with a headlight not in compliance with the requirements of paragraph (a) of this section shall not be moved in revenue service if the defective headlight is discovered during the pre-service inspection required by § 238.903(d)(1), and may only move in accordance with § 238.1003(e). The leading unit of a trainset with a headlight not in compliance with the requirements of paragraph (a) of this section that is discovered while the trainset is in service may continue in service only to the nearest forward location where either the leading unit can be switched, repairs necessary to bring the trainset into compliance can be made, or the trainset can be moved according to the procedures specified in § 238.1003(b)(1) through (3).

(c) Headlights may be provided with a device to dim the light. The use of this feature for Tier III trainsets operating on a dedicated right-of-way shall be described by the railroad in its system description required under § 238.110(d)(2)(xv).

(d) If Tier III trainsets are equipped with headlights incorporating alternative technology, the number of lamps specified in paragraph (a) of this section does not apply, and—

(1) The railroad's inspection, testing, and maintenance program shall include procedures for determining that such headlights provide the illumination intensity required by paragraph (a) of this section; and

(2) A means must be provided to ensure that the minimum illumination intensity required by paragraph (a) of this section can be achieved under the snow or ice conditions expected in the geographic region in which the trainsets will be operated.

■ 32. Add § 238.769 to read as follows:

§ 238.769 Auxiliary lights.

(a) Trainsets operated at a speed greater than 20 mph in a shared right-of-way over one or more public highway-rail grade crossings shall be equipped with operative auxiliary lights, in addition to the headlight required by § 238.767. Auxiliary lights shall conform with § 229.125(d)(1) though (3) of this chapter.

(b) Auxiliary lights required by paragraph (a) of this section may be arranged in any manner specified in § 229.125(e)(1) through (2) of this chapter.

(c) In addition to the requirements of paragraphs (a) and (b) of this section, auxiliary lights required by paragraph (a) of this section shall comply with § 229.125(f).

(d)(1) A lead unit of a trainset with only one operative auxiliary light must be repaired or switched to a trailing position before departure from the place where a pre-service inspection is required under § 238.903(d)(1) for that trainset.

(2) A lead unit of a trainset with only one operative auxiliary light that is discovered after the trainset enter service may continue to be used in passenger service:

(i) Until the next scheduled inspection of the trainset where the repairs necessary to bring the trainset into compliance can be made; or

(ii) According to the procedures specified in the railroad's inspection, testing, and maintenance program.

(3) A lead unit of a trainset with two failed auxiliary lights may only proceed to the next forward location where repairs can be made. This movement must be made according to the procedures specified in § 238.1003(b)(1) through (3).

■ 33. Add § 238.771 to read as follows:

§ 238.771 Marking device.

(a) Except for paragraph (d)(3) of this section, the trailing end of each trainset shall be equipped with at least one marking device conforming with the characteristics specified in § 221.14(a)(1) through (3), along with the following other requirements:

(1) An arrangement to continuously illuminate when on the trailing end of the train; and

(2) For marker lights incorporating alternative technology, the railroad's inspection, testing, and maintenance program shall include procedures for determining that such marker lights meet the requirements of paragraphs (a) and (a)(1) of this section.

(b) The centroid of the marking device shall be located at a minimum of 48 inches above the top of the rail.

(c) Trailing end marking devices shall operate when the trainset is in service and be inspected as defined in the railroad's inspection, testing, and maintenance program.

(d)(1) A trainset with a marking device not in compliance with the requirements of paragraph (a) of this section shall not be moved in revenue service if the defective marking device is discovered during the pre-service inspection required by § 238.903(c)(2).

(2) Whenever a marking device prescribed in this section becomes inoperative en route, the train may be moved to the next forward location where the marking device can be repaired or replaced.

(3) A trainset's trailing end headlight illuminated on the dim setting satisfies the requirements of a highly visible marking device as described in paragraph (a) of this section.

■ 34. Add § 238.773 to read as follows:

§ 238.773 Cab lights.

Each trainset cab shall have cab lights in conformance with the requirements of § 229.127(a) of this chapter. Cab passageways and compartments shall also be adequately illuminated.

■ 35. Add § 238.775 to read as follows:

§ 238.775 Trainset horn.

(a) Each leading end of trainset shall be equipped with a horn that conforms to the requirements of § 229.129(a) of this chapter.

(b) Each trainset horn shall be individually tested under paragraph (e) of this section, or through acceptance sampling under § 229.129(b)(1) of this chapter, to ensure compliance with paragraph (a) of this section.

(c) Except as provided in paragraph (d) of this section, each trainset equipped with a replacement horn shall be tested, in accordance with paragraph (e) of this section, before the next specified test required by the railroad inspection, testing and maintenance program.

(d) Trainsets that have already been tested individually under paragraph (e) of this section, or through acceptance sampling under § 229.129(b)(1) of this chapter, shall not be required to undergo sound level testing when equipped with a replacement trainset horn, provided the replacement trainset horn is of the same model as the horn that was replaced and the mounting location and type of mounting are the same.

(e) Testing of the trainset horn sound level shall be in accordance with § 229.129(c) of this chapter, with the following exceptions:

(1) In lieu of § 229.129(c)(7) of this chapter, the microphone shall be located 100 feet forward of the front-most car body structure of the trainset, four feet above the top of the rail, at an angle no greater than 20 degrees from the center line of the track, and oriented with respect to the sound source according to the manufacturer's recommendations. The observer shall not stand between the microphone and the horn.

(2) Reports required by § 229.129(c)(10) of this chapter may be maintained electronically.

■ 36. Add § 238.777 to read as follows:

§ 238.777 Inspection records.

(a) For certain periodic inspections, as defined by the railroad's inspection, testing, and maintenance program required under subpart I of this part, the railroad shall maintain a record of the inspection that shall contain at a minimum:

(1) The date the last periodic inspection was performed as required by the railroad's inspection, testing, and maintenance program;

(2) The name of the person conducting the inspection; and

(3) The name of the supervisor certifying that the inspection was performed.

(b) The information contained in the inspection record and summary report required under paragraph (c) of this section shall be made available to the engineer so that the engineer knows the trainset is ready for service. The inspection record and summary report shall be made available to the engineer by either—

(1) Electronic displays provided in the cab or other FRA-approved devices located within the trainset; or

(2) Being physically displayed in hardcopy form under a transparent cover in a conspicuous place in the cab of each trainset.

(c) The summary report shall be generated that provides pertinent information to review and will be made available to FRA upon request. At a minimum, the summary report shall include information such as the periodic inspection dates, applicable waivers, the type of brake system used (*e.g.,* regenerative versus rheostatic), whether the trainset's event recorder is out of service, the car number, the date of manufacture, the number of propulsion motors, the manufacturer's information, and verification that all required inspections have been performed.

(d) Compliance with the requirements of § 229.23 of this chapter shall satisfy the requirements of this section.

■ 37. Add § 238.781 to read as follows:

§ 238.781 Current collectors.

(a) *Overhead Collector Systems.* (1) Pantographs shall comply with § 229.77(a) of this chapter.

(2) Each overhead collector system, including the pantograph, shall be equipped with a means to electrically ground any uninsulated parts to prevent the risk of electrical shock on personnel working on the system.

(3) Means shall be provided to permit the engineer to determine that the pantograph is in its lowest position, and for securing the pantograph if necessary, without the need to mount the roof of the trainset.

(4) Each pantograph shall be equipped with a means to safely lower the pantograph in the event of an emergency. If an emergency pole is used for this purpose, that part of the pole which can be safely handled shall be marked to so indicate. This pole shall be protected from moisture and damage when not in use. The means of securement and electrical isolation of a damaged pantograph, when automatic methods are not possible, shall be addressed in the railroad's inspection, testing, and maintenance program.

(b) *Third Rail Shoes.* Trainsets equipped with pantographs and third-rail shoes shall comply with §§ 229.79 and 229.81(b) of this chapter.

■ 38. Add § 238.783 to read as follows:

§ 238.783 Circuit protection.

(a) *General.* Circuits used for purposes other than propelling the equipment shall be provided with a circuit breaker or equivalent current-limiting devices located as near as practical to the point of connection to the source of power for that circuit. Such protection may be omitted from circuits controlling safety-critical devices.

(b) *Lightning protection.* The main propulsion power line shall be protected with a lightning arrestor, automatic circuit breaker, and overload relay. The lightning arrestor shall be run by the most direct path possible to ground. These overload protection devices shall be housed in an enclosure designed specifically for that purpose with the arc chute vented directly to outside air. Safety-critical circuits shall be protected against lightning damage. Should safety-critical circuits be adversely affected in such an instance, the trainset shall default to a safe condition.

(c) *Overload and ground fault protection.* Head-end power, including trainline power distribution, shall be provided with both overload and ground fault protection.

■ 39. Add § 238.785 to read as follows:

§ 238.785 Trainset electrical system.

(a) *Insulation or grounding of metal parts.* Tier III trainsets shall comply with § 229.83 of this chapter.

(b) *High voltage markings: doors, cover plates, or barriers.* Tier III trainsets shall comply with § 229.85 of this chapter.

(c) *Hand-operated electrical switches.* Tier III trainsets shall comply with § 229.87 of this chapter.

(d) *Conductors, jumpers, and cable connections.* Tier III trainsets shall comply with §§ 229.89 and 238.225(a) of this chapter.

(e) *Energy storage systems.* (1) *Batteries.* In addition to complying with the requirements of § 238.225(b), battery circuits shall include an emergency battery cut-off switch to completely disconnect the energy stored in the batteries from the load.

(2) *Capacitors for high-energy storage.* If provided, capacitors shall be—

(i) Isolated from the cab and passenger seating areas by a fire-resistant barrier; and

(ii) Designed to protect against overcharging and overheating.

(f) *Power dissipation resistors.* In addition to complying with the requirements of § 238.225(c), power dissipation resistor circuits shall incorporate warning or protective devices for low ventilation air flow, over-temperature, and short circuit failures.

(g) *Electromagnetic interference and compatibility.* In addition to complying with the requirements of § 238.225(d), electrical and electronic systems of equipment shall be capable of operation in the presence of external electromagnetic noise sources.

(h) *Motors and generators.* (1) All motors and generators shall be in proper working order, or safely cut-out and isolated.

(2) If equipped, support brackets, bearings, isolation mounts, and guards shall be present, function properly, and function as intended, as specified in the railroad's inspection, testing, and maintenance program.

■ 40. Add § 238.791 to read as follows:

§ 238.791 Safety appliances.

(a) *Applicability.* This section applies to Tier III trainsets. The requirements of this section may also be applied to Tier I passenger cars and Tier I alternative passenger trainsets in lieu of the requirements of §§ 238.229 and 238.230, or part 231 of this chapter, as applicable.

(b) *Attachment.* Safety appliances must be attached by either mechanical fasteners meeting the requirements of paragraph (b)(1) of this section, or by welds meeting the requirements of paragraph (b)(2) of this section.

(1) *Mechanical fasteners.* Safety appliance mechanical fasteners shall have tensile strength and fatigue resistance equal to or greater than a ½ inch (12 mm) diameter SAE Grade 5 steel bolt. Fasteners must be one- or two-piece rivets, Huck bolts®, or threaded fasteners secured by one of the following methods:

(i) Self-locking feature, including locknut and locking bolt, that meets the prevailing torque requirements for locking fasteners such as those specified by the Industrial Fastener Institute for the applicable grade and size fastener used.

(ii) Locking device that provides the minimum prevailing first removal torque value for locking fasteners, such as those specified by the Industrial Fastener Institute for the applicable grade and size fastener used.

(iii) Wedge-locking washers consisting of two symmetrically designed washers that have inclined ramps on the sides in mutual contact and non-slip contact surfaces on the sides in contact with the nut and work piece. Washer and nut or bolt arrangements utilizing similar locking principles are also acceptable.

(iv) Lock washers that meet the requirements for lock washers specified by the Industrial Fastener Institute for the applicable grade and size fastener used.

(v) Locking tab, cotter pin, or safety wire that restricts rotation of the bolt, or nut, or both.

(2) *Welded Safety Appliances.* Welds for safety appliances, connections, safety appliance subassemblies, and brackets or supports shall be—

(i) Designed and fabricated in accordance with the welding process and the quality control procedures contained in the applicable American Welding Society Standard, the Canadian Welding Bureau Standard, or an equivalent nationally or internationally recognized welding standard;

(ii) Performed by an individual possessing the qualifications to be certified under the applicable American Welding Society Standard, the Canadian Welding Bureau Standard, or an equivalent nationally or internationally recognized welding qualification standard;

(iii) Inspected by an individual qualified to determine that the welding has been performed in accordance with the requirements in paragraph (b)(2)(i) of this section. A written or electronic record of the inspection shall be retained by the railroad operating the equipment and shall be provided to FRA upon request. At a minimum, this record shall include the date, time, and location of the inspection, and the identification and qualifications of the person performing the inspection.

(iv) Repaired in accordance with the requirements of paragraphs (b)(2)(i) through (iii) of this section.

(3) *Carbody.* Brackets or supports welded in accordance with paragraphs (b)(2)(i) through (iii) of this section and meeting the strength requirements in paragraphs (c), (d)(4)(ii), and (e)(4)(ii) of this section shall be considered part of the carbody structure.

(4) *Inspection.* Except for couplers and handbrakes, all safety appliances, and brackets or supports shall, as far as practicable, be installed to facilitate inspection of attachments, whether mechanical fasteners or welds.

(5) *Strength.* Welds, if used, and mechanical fasteners shall be designed to have an ultimate strength with a factor of safety of at least two with respect to the load values specified in paragraphs (d)(3)(ii) and (e)(4)(ii) of this section.

(c) *Fatigue life.* The safety appliance, the support or bracket to which the safety appliance is attached, and the carbody structure to which the safety appliance is directly attached or the support or bracket is attached, shall be designed for a fatigue life of 10 million

cycles based upon the service vibration environment.

(d) *Handholds.* (1) *Number, location, and orientation.* (i) *Exterior side door passenger access handholds.* (A) A vertical handhold shall be provided for passengers on both sides of steps (one on each side) used for boarding or alighting. Internally installed handrails, as that term is used under part 38 of this title, may be used to satisfy the requirements of this paragraph, and if used must meet the applicable requirements for handrails specified in § 38.97(a) or § 38.115(a) of this title.

(B) Each vertical handhold provided for passengers shall be positioned so that the bottom clear length shall not be more than 54 inches above top of rail.

(ii) *Exterior cab access handholds.* (A) Except as provided in paragraph (f)(2)(iv) of this section, a vertical handhold shall be provided for crewmembers and other authorized personnel on both sides (one on each side) of any exterior cab access door, if equipped.

(B) Vertical handholds provided for cab access doors shall have a clear length extending above the floor of the cab at least 48 inches, and where practicable at least 60 inches or as high as feasible based on carbody design, enabling a person to safely turn around. A smaller handhold, providing at least 16 inches of clear length, may be installed above the exterior cab access door opening on the inside of the equipment to facilitate a person's ability to safely turn around.

(iii) *Side handholds.* (A) At least one side handhold, preferably two, shall be provided at each location equipped with a sill step, and be oriented either vertically, horizontally, or a combination thereof, relative to the carbody. Each side handhold shall provide at least 16 inches of clear length. At least 12 inches of the clear length of each horizontal side handhold shall be directly over the sill step.

(B) If one horizontal handhold is used it shall be not less than 58.5 nor more than 64.5 inches above top of rail.

(C) If two horizontal handholds are used, one horizontal handhold shall be at most 54 inches above top of rail. The second horizontal handhold shall be 54 to 58 inches above the step.

(D) If one vertical handhold is used, its lowest clearance point shall be at most 54 inches above top of rail. Its highest clearance point shall be at least 70 inches above top of rail. The handhold shall be located above the clear length of the step.

(E) If two vertical handholds are used, the lowest clearance point of each vertical handhold shall be at most 54 inches above top of rail. The highest clearance point of each vertical handhold shall be at least 58 inches above the step. Each set of vertical handholds shall be spaced not less than 16 inches nor more than 22 inches apart. To align two vertical handholds with the sill steps, the handholds shall be located in the longitudinal direction such that the inside face of the outboard handhold is no more than 2 inches outboard of the inside face of the outboard vertical leg of the step and is no less than 10 inches outboard from the inside face of the inboard vertical leg.

(F) When a combination of horizontal and vertical handholds is used, the horizontal handhold shall be 54 to 58 inches above the step. The lowest clearance point of the vertical handhold shall be at most 54 inches above top of rail. The highest clearance point of the vertical handhold shall be at least 70 inches, preferably 78 inches above top of rail. One continuous handhold may be used as long as it meets the dimensional requirements of this paragraph.

(iv) *End handholds.* (A) Except as provided in paragraph (d)(1)(iv)(F) of this section, two horizontal end handholds shall be provided at each end of a vehicle or trainset unit equipped with an automatic coupler, as described in paragraph (g) of this section, with one on each side of the vehicle or trainset unit. Each end handhold shall provide at least 16 inches of clear length.

(B) There shall be no more than 16 inches between the side of the vehicle or trainset unit to the useable clear length of an end handhold, measured horizontally.

(C) If the equipment is designed with a tapered nose, the side of the car shall be determined based on the outer dimension of the tapered nose where the end handhold is attached.

(D) End handholds shall be positioned no more than 50 inches from top of rail. Handholds may be attached to any primary structure (*e.g.,* carbody frame; or pilot, or plow on cab cars), provided the dimension requirements in paragraph (d)(1)(iv)(A) of this section are met.

(E) An uncoupling lever may be used as an end handhold if it meets the requirements of paragraphs (b), (c), and (d) of this section.

(F) End handholds are not required at the ends of vehicles equipped with an automatic coupling mechanism that can be safely operated from inside the appropriate cab of the vehicle and does not require ground intervention from a person such as to go on, under, or between to couple air, electric or other connections.

(2) *Handhold dimensions.* Regardless of location or orientation, the minimum diameter for each handhold listed under paragraph (d)(1) of this section shall be no less than ⅝ inch.

(3) *Clearance.* All handholds listed under paragraph (d)(1) of this section shall have a clearance between the handhold and carbody of at least 2 inches, preferably 2½ inches, for the entire clear length, except when a combination of handholds, or additional attachment points, or both, are necessary due to the carbody design, or length of the handhold, or both. In such cases, alternate ergonomic configurations may be used instead, subject to FRA approval.

(4) *Strength and rigidity.* Handholds shall meet either of the following strength and rigidity requirements:

(i) They must be made of ⅝-inch diameter steel, or a material providing an equivalent level of mechanical strength; or

(ii) They must be designed to support a load of 350 lbs at any point on the useable length, in any direction, and shall be rigidly attached to the carbody structure such that the maximum elastic deflection at the midpoint of an unsupported span under 50 percent of the applied 350-lb load shall be no greater than L/120, where L is the unsupported length of the span. Stresses in the handhold and the carbody structure to which it is attached shall be less than the minimum yield strength for the load values specified in this paragraph. For purposes of evaluation, the load may be distributed over a distance of not more than 3 inches along the usable clear length of the handhold.

(5) *Multiple handholds.* When multiple handholds are arranged in a ladder-style configuration, each handhold shall meet the requirements of this paragraph (d) and shall not have a vertical rise between handholds exceeding 18 inches.

(e) *Sill steps.* (1) *Number and location.* (i) Except as provided in paragraph (e)(1)(iv) of this section, two sill steps shall be provided at each end of a vehicle or trainset unit equipped with an automatic coupler, with one on each side of the vehicle or trainset unit no more than 18 inches from the end of the vehicle or trainset unit to the useable clear length of the sill step. For vehicle or trainset ends equipped with shrouding or aerodynamic treatments that taper toward the center of the vehicle or trainset unit, the 18 inches shall be measured from the point where the shrouding or aerodynamic treatment begins to taper.

(ii) The sill step tread shall be no more than 24 inches, preferably no more than 22 inches, above top of rail.

(iii) The outside edge of the sill step tread shall be no more than 2 inches inside of any carbody structure located directly above the sill step and below the lowest side handhold.

(iv) Sill steps are not required—

(A) If an exterior cab access door or an exterior passenger access door is equipped with handholds and steps, as required by this section, and is located such that an employee riding on the step has an unobstructed view of the track ahead.

(B) At the ends of vehicles equipped with an automatic coupling mechanism that can be safely operated from inside the appropriate cab of the vehicle and does not require ground intervention from a person such as to go on, under, or between to couple air, electric or other connections.

(2) *Dimensions.* (i) The minimum clear length of the tread of the sill step shall be 10 inches.

(ii) The minimum clear distance above the usable clear length of each step shall be—

(A) 4.7 inches for Tier III trainsets.

(B) 8 inches for applicable Tier I equipment as specified in paragraph (a) of this section.

(iii) The minimum clear space from the outside edge of the sill step shall be 6 inches for the entire usable clear length of the step, of which at least 2 inches shall be tread surface.

(iv) Sill steps shall not have a vertical rise between treads exceeding 18 inches.

(v) Proper clearance must be provided between steps and the vehicle running gear to provide proper clearance from moving parts.

(3) *Sill step tread surface.* The portion of the tread surface area of each sill step that is normally contacted by the foot shall be treated with an anti-skid material or be slip resistant by texturing of the metal surface in such a way that it lasts the life of the car. Some examples of acceptable methods are: diamond plate or stamped, upset, or expanded metal. For enclosed step designs, at least 50 percent of the tread area shall be open space.

(4) *Strength and rigidity.* Sill steps shall meet either of the following strength and rigidity requirements:

(i) If a rectangular cross-section is used, the sill step shall have a minimum ½-inch-thick by 2-inch-wide cross-sectional area. Alternate material sections may be used if they meet the strength and rigidity of a ½-inch-thick by 2-inch-wide steel section. Sill or crew steps exceeding 18 inches (457 mm) in depth shall have an additional tread and be laterally braced; or

(ii) Sill steps shall be designed to support individually applied loads at any point on the useable length of 450 lbs in the downward direction and 350 lbs in the horizontal direction (inward or outward). Stresses in the sill step and the carbody structure to which it is attached shall be less than the minimum yield strength for the load values specified in this paragraph. For purposes of evaluation, the load may be distributed over a distance of not more than 3 inches along the usable clear length of the sill step.

(f) *Crew access.* (1) *Ground-level crew access.* (i) Crewmembers shall be provided the means where they can board and alight the equipment from ground level, safely.

(A) For a trainset, or any section of a trainset that is not semi-permanently connected to an adjacent unit of the same trainset, a minimum of four locations, two per side, shall be provided.

(B) For single vehicles or trainset units that are not semi-permanently connected to an adjacent vehicle or trainset unit, a minimum of two locations, one per side, shall be provided.

(ii) Exterior side doors used for passenger boarding and alighting that provide ground-level access equipped with handholds meeting the requirements of paragraphs (d)(1)(i), (d)(2), and (d)(3) of this section may be used to satisfy the requirements of paragraph (f)(1)(i) of this section so long as access to the controlling cab can be gained from the interior of the trainset.

(iii) An exterior cab access side door that provides access to the trainset cab and is equipped with handholds meeting the requirements of paragraphs (d)(1)(ii), (d)(2), and (d)(3) of this section may be used to satisfy the requirements of paragraph (f)(1)(i) of this section so long as access to the interior of the trainset can be gained from the trainset cab.

(2) *Ground level crew access side steps.* (i) Except as provided in paragraph (f)(2)(iv) of this section, for each location provided for crewmember ground-level access under paragraph (f)(1)(i) of this section, steps shall be provided that comply with the requirements of paragraphs (e)(2) through (4) of this section and meet the following requirements:

(A) The outside edge of the tread of the step shall be not more than 3 inches inside of the edge of the door threshold; and

(B) The bottom tread shall be not more than 24 inches, preferably not more than 22, inches above top of rail.

(ii) Handholds meeting the requirements of paragraphs (d)(1)(ii), (d)(2), and (d)(3) of this section shall be provided at each location where ground level crew access steps are provided.

(iii) The steps required under paragraph (f)(2)(i) may be retractable.

(iv) Portable ladders equipped with handrails designed for safe access from ground level can also be used in lieu of crew side access steps.

(g) *Couplers.* (1) Except as provided in paragraph (g)(2) of this section, trainset units shall be equipped with automatic couplers at each end. The coupler shall—

(i) Couple on impact; and

(ii) Uncouple by either activation of a traditional uncoupling lever, or some other type of uncoupling mechanism that does not require a person to go on, under, or between the trainset units.

(2) An automatic coupler is not required—

(i) At trainset unit ends that are semi-permanently coupled to an adjacent trainset unit; or

(ii) Where the coupler on the leading and trailing ends of a trainset is only used for rescue purposes. The railroad shall develop and implement rescue procedures that assure employee safety during rescue operations are included as part of its inspection, testing, and maintenance program.

(h) *Uncoupling levers or devices.* (1) *General.* Each trainset unit end equipped with an automatic coupler required by paragraph (g)(1) of this section shall have either—

(i) A manual uncoupling lever; or,

(ii) An uncoupling mechanism operated by controls located in the appropriate cab, or other secure location in a trainset. Additional manual uncoupling levers or handles on the coupler provided only as a backup for that remotely operated mechanism are not subject to paragraph (h)(2) of this section, but shall allow use from outside the gage of the track, or in accordance with railroad procedures.

(2) *Manual uncoupling lever or device.* Manual uncoupling levers shall be applied so that the automatic coupler can be operated from the left side of the trainset unit as determined when facing the end of the trainset unit, from ground level without requiring a person to go between cars or trainset units. Manual uncoupling levers shall have a minimum clearance of 2 inches, preferably 2½ inches, around the handle.

(i) *Shrouding or aerodynamic treatments.* The automatic coupler, end

handholds, and uncoupling mechanism on the leading and trailing ends of a trainset unit may be located within a removable shroud to reduce aerodynamic effects.

(j) *Hand brakes.* Trainsets, and trainset units or sections of trainsets that are not semi-permanently coupled to an adjacent trainset unit or section of trainset, must be equipped with an efficient parking or hand brake capable of holding the trainset, trainset unit, or section of trainset on at least a 3-percent grade, or on the worst-case grade conditions identified by the operating railroad, as approved by FRA.

(k) *Safety appliances for appurtenances and windshields.* (1) Trainsets and trainset units having appurtenances such as headlights, windshield wipers, marker lights, and other similar items required for the safe operation of the trainset or trainset unit must be equipped with handholds and steps meeting the requirements of this section, if the appurtenances are designed to be maintained or replaced from the exterior of the trainset or equipment.

(2) The requirements of paragraph (k)(1) do not apply if railroad operating rules require, and actual practice entails, the maintenance and replacement of these components by maintenance personnel in locations protected by the requirements of subpart B of part 218 of this chapter equipped with ladders and other tools to safely repair or maintain those appurtenances.

(l) *Optional safety appliances.* Safety appliances installed at the option of the railroad shall be approved by FRA pursuant to § 238.110.

■ 41. Add subpart I to part 238 to read as follows:

Subpart I—Trainset Inspection, Testing, and Maintenance Requirements for Tier III Passenger Equipment

Sec.

Subpart I—Trainset Inspection, Testing, and Maintenance Requirements for Tier III Passenger Equipment

§ 238.901 Scope.

This subpart contains specific requirements for inspection, testing, and maintenance of Tier III passenger equipment.

§ 238.903 General requirements.

(a) *General.* Each railroad operating Tier III passenger equipment shall have a written inspection, testing, and maintenance program, approved pursuant to § 238.913.

(b) *Program contents.* The program shall provide detailed information, consistent with the requirements set forth in this subpart, on the inspection, testing, and maintenance procedures necessary for the railroad to safely maintain and operate its Tier III passenger equipment. This information shall include a detailed description of—

(1) Inspection procedures, intervals, and acceptance/rejection criteria addressing applicable reliability-based monitoring and inspections based on appendix E to this part or an equivalent national or international standard;

(2) Test procedures and intervals;

(3) Scheduled preventative maintenance intervals;

(4) Maintenance procedures;

(5) Special testing equipment or measuring devices required to perform inspections and tests;

(6) The training, qualification, and designation of employees and contractors to perform inspections, tests, and maintenance pursuant to the requirements of paragraph (h) of this section;

(7) Out-of-service procedures to protect out-of-service equipment, to account for time out of service, and how the railroad will return out-of-service equipment back to service; and

(8) The required operational braking capability.

(c) *Specific safety inspections.* The program required under paragraph (a) of this section shall ensure that all Tier III passenger trainsets receive thorough safety inspections by qualified personnel designated by the railroad at regular intervals. Each inspection identified in this paragraph shall be performed on Tier III trainsets in accordance with the test procedures and inspection criteria and at the intervals defined by the railroad's approved inspection, testing, and maintenance program. Except as specified in paragraph (c)(2)(i) of this section regarding defects in a trainset's braking system, if any system or component that is defined as safety-critical under § 238.911(b) is found to be defective or otherwise non-compliant during these inspections, the trainset shall not be put into service until that condition is rectified. In addition to other inspections required under subpart H of this part, the following inspections shall be performed on each trainset:

(1) Pre-departure inspections, *i.e.,* trainset system verifications, inspections, or functional tests that must be performed prior to departures from terminal locations where operating ends or operating crews are changed. Pre-departure inspection procedures must include—

(i) Verification of application and release of the service and emergency brakes using the monitoring system; and

(ii) Functional tests of the passenger access exterior side doors.

(2) Pre-service inspections, *i.e.,* inspections conducted at identified locations where such inspections can be safely and properly conducted prior to the trainset entering service after the previous pre-service inspection, at a period not to exceed 48 hours. At a minimum, pre-service inspections must include—

(i) All items covered under paragraph (c)(1) of this section. Defects with the brake system discovered during a pre-service inspection shall be handled in accordance with § 238.1003(d)(1), except that if a trainset's braking system is discovered having less than the required operational braking capability, it shall move immediately to a repair point under the provisions of § 238.1003(b) and (e).

(ii) An interior inspection of emergency systems, ensuring functionality of certain systems (such as the public address and intercom systems) including a determination that any required tools or other implements necessary for emergency egress are present.

(3) Brake system inspections.

(4) Truck inspections.

(5) Other safety-critical periodic inspections.

(d) *Inspection, testing and maintenance intervals.* The program shall identify the railroad's initial scheduled inspection, testing, and maintenance intervals for Tier III equipment. Changes to scheduled inspection, testing, and maintenance intervals of safety-critical components, as identified by § 238.911(b), shall be implemented only when approved by FRA under § 238.913. Such changes must be justified by accumulated, verifiable operating data.

(e) *Training and qualification program.* The program required under

this subpart shall describe the training, qualification, and designation program established by the railroad to qualify individuals to inspect, test, and maintain the equipment.

(1) The railroad shall identify which inspection, testing, or maintenance tasks require special training or qualifications.

(2) The training and qualification program shall, at a minimum, address the items in § 238.109(b).

(3) A list of all personnel and contractors designated as qualified to perform activities specific to paragraph (e)(1) of this section, training material, and records shall be maintained and made available to FRA upon request.

(4) Only individuals qualified under the railroad's program may inspect, test, or maintain components or systems the railroad deems safety-critical.

(f) *Retention of records.* At a minimum, the railroad shall keep the records of each inspection required under paragraph (c) of this section. Each record shall be maintained for at least one year from the date of the inspection.

§ 238.905 Compliance.

After the railroad's inspection, testing, and maintenance program is approved by FRA pursuant to § 238.913, the railroad shall adopt and comply with the program, and perform—

(a) All inspections and tests described in the program in accordance with the procedures and criteria for the components that the railroad identifies as safety-critical; and

(b) All maintenance tasks described in the program in accordance with the procedures and intervals for the components that the railroad identifies as safety-critical.

§ 238.907 Standard procedures for safely performing inspection, testing, and maintenance, and repairs.

(a) The railroad shall establish standard procedures for performing all safety-critical or potentially hazardous inspection, testing, maintenance, and repair tasks. These standard procedures shall—

(1) Describe in detail each step required to safely perform the task;

(2) Describe the knowledge necessary to safely perform the task;

(3) Describe any precautions that shall be taken to safely perform the task;

(4) Describe the use of any safety equipment necessary to perform the task;

(5) Be approved by the railroad's official responsible for safety;

(6) Be enforced by the railroad's supervisors responsible for accomplishing the tasks; and

(7) Be reviewed annually by the railroad and its designated employee representatives pursuant to § 238.913(e).

(b) The inspection, testing, and maintenance program required by this section is not intended to address and should not include procedures to address employee working conditions that arise in the course of conducting the inspections, tests, and maintenance set forth in the program. When reviewing the railroad's program, FRA does not intend to review any portion of the program that relates to employee working conditions.

§ 238.909 Quality control/quality assurance program.

Each railroad shall establish an inspection, testing, and maintenance quality control/quality assurance program. The railroad or its contractor(s), or both, shall ensure that inspections, testing, and maintenance are performed in accordance with the railroad's approved inspection, testing, and maintenance program.

§ 238.911 Inspection, testing, and maintenance program format.

The railroad's inspection, testing, and maintenance program established pursuant to this subpart I shall be comprised of—

(a) The complete inspection, testing, and maintenance program for all components, systems, or sub-systems on a Tier III trainset, whether safety-critical or not, to include all inspections, tests, and maintenance tasks required, the intervals and periodicity of those inspections, tests, and maintenance tasks, and all associated information and procedures required for the railroad and its personnel to implement the program. The railroad shall submit the complete program to FRA along with the condensed version required under paragraph (b) of this section for FRA review to ensure that the railroad has properly classified a particular inspection, test, or maintenance task as safety-critical or not. Should FRA identify a particular inspection, test, or maintenance task as safety-critical, the railroad shall include the particular inspection, test, or maintenance task in the condensed version of the program under paragraph (b) of this section.

(b) A condensed version of the program that contains only those items identified as safety-critical by the railroad. The railroad shall submit this version for approval by FRA, as provided in § 238.913. The operation of emergency equipment, emergency back-up systems, trainset exits, and trainset safety-critical hardware and software systems shall be deemed safety-critical.

§ 238.913 Inspection, testing, and maintenance program approval procedure.

(a) *Submission*—(1) *Initial submission.* The railroad shall submit for approval an inspection, testing, and maintenance program not less than 180 days prior to commencing revenue service. The program shall be submitted to the Associate Administrator.

(2) *Submission of amendments.* If the railroad seeks to amend an approved program, the railroad shall file with the Associate Administrator for approval of such amendment not less than 60 days prior to the proposed implementation date of the amendment.

(b) *Contents.* Each program or amendment shall contain the following:

(1) The information prescribed in this subpart for such program or amendment;

(2) The name, title, address, and telephone number of the primary point of contact for the program or amendment; and

(3) A statement affirming that the railroad has provided a copy of the program or amendment on designated representatives of railroad employees as required under paragraph (c) of this section, together with a list of the names and addresses of those persons.

(c) *Comment.* Each railroad shall provide a copy to the designated representatives of railroad employees responsible for the equipment's operation, inspection, testing, and maintenance under this subpart, of each submission filed with FRA. Designated representatives will then have 45 days from the date of filing to provide any comment to FRA.

(1) Each comment shall set forth specifically the basis upon which it is made and contain a concise statement of the interest of the commenter in the proceeding.

(2) Each comment shall be submitted to the Associate Administrator.

(3) The commenter shall certify that a copy of the comment was provided to the railroad.

(d) *Approval*—(1) *Initial submission.* Within 60 days of receipt of each initial inspection, testing, and maintenance program, FRA will conduct a formal review of the program. FRA will then notify the primary railroad contact person in writing whether the inspection, testing, and maintenance program is approved and, if not approved, the specific points in which the program is deficient. If a program is not approved by FRA, the railroad shall amend its program to correct all deficiencies and resubmit its program with the required revisions not later than 45 days prior to commencing revenue service. The railroad shall not

implement its inspection, testing, and maintenance program until approved by FRA.

(2) *Amendments.* FRA will review each proposed amendment to the program within 45 days of receipt. FRA will then notify the primary railroad contact person and the designated employee representatives in writing whether the proposed amendment has been approved by FRA and, if not approved, the specific points in which the proposed amendment is deficient. The railroad shall correct any deficiencies and file the corrected amendment prior to implementing the amendment.

(3) *Identification of deficiencies after approval.* Should FRA identify deficiencies within the program following initial approval of a program or approval of an amendment, FRA will notify the railroad of the specific points in which the program or amendment is deficient. The railroad must resubmit its program or amendment with the necessary revisions for review and approval in accordance with paragraph (d)(1) or (2) of this section.

(e) *Annual review.* The inspection, testing, and maintenance program required by this section shall be reviewed by the railroad annually. The railroad shall provide written notice to the Associate Administrator and the designated representatives of the railroad's employees at least one month prior to the annual review. If the Associate Administrator or their designee indicates a desire to be present, the railroad shall provide a scheduled date and location for the annual review. If the Associate Administrator requests the annual review be performed on another date but the railroad and the Associate Administrator are unable to agree on a date for rescheduling, the annual review may be performed as scheduled.

■ 42. Add subpart J to part 238 to read as follows:

Subpart J—Movement of Defective Tier III Passenger Equipment

Sec.

Subpart J—Movement of Defective Tier III Passenger Equipment

§ 238.1001 Scope.

This subpart contains specific requirements for the movement of defective Tier III passenger equipment.

§ 238.1003 Movement of defective Tier III passenger equipment.

(a) Except as provided in § 238.903(c)(2)(i) and paragraph (d)(1) of this section, a Tier III trainset with one or more safety-critical items not in compliance with the railroad's approved inspection, testing, and maintenance program identified during a pre-service inspection required by § 238.903(c)(2) shall not be moved in revenue service and may only be moved in accordance with paragraph (e) of this section.

(b) A Tier III trainset with one or more safety-critical items not in compliance with the railroad's approved inspection, testing, and maintenance program identified while en route to its destination after its pre-service inspection is performed and before its next pre-service inspection is performed, may be moved only after the railroad has complied with the following:

(1) An individual qualified under the training and qualification program implemented pursuant to § 238.903(e) determines that it is safe to move the trainset, consistent with the railroad's operating rules. If appropriate, this determination may be made based upon a description of the defective condition provided by a crewmember. If the determination required by this paragraph is made by an off-site, qualified individual based on a description of the defective condition by on-site personnel, then a qualified individual shall perform a physical inspection of the defective equipment at the first location possible to verify the description of the defect provided by the on-site personnel.

(2) The qualified individual who made the determination in paragraph (b)(1) of this section notifies the train crew, in accordance with the railroad's operating rules, of the maximum authorized speed, authorized destination, and any other operational restrictions that apply to the movement of the non-compliant trainset. This notification may be achieved through the tag required by paragraph (b)(3) of this section.

(3) The qualified individual securely attaches to the control stand on each control cab of the trainset a tag bearing the words ''NON–COMPLIANT TRAINSET'' and containing the following information:

(i) The trainset, and unit or car number;

(ii) The name, job title, location, and signature if possible, of the qualified individual making the determination that the non-compliant trainset is otherwise safe to move;

(iii) The location and date of the inspection that led to the discovery of the non-compliant item;

(iv) A description of each non-compliant item;

(v) Movement restrictions, if any; and

(vi) The authorized destination of the trainset.

(c) Automated tracking systems used to meet the tagging requirements contained in paragraph (b)(3) of this section must comply with § 238.15(c)(3).

(d) In the event of an in-service failure of the braking system—

(1) The trainset may continue in service for no more than 5 consecutive calendar days so long as the trainset meets or exceeds its required operational braking capability.

(2) When below the required operational braking capability, the trainset may remain in service until the next pre-service inspection and proceed only in accordance with railroad operating rules relating to the percentage of operative brakes and at a speed no greater than the maximum authorized speed as determined by § 238.731(e)(4), so long as the requirements of paragraph (b) of this section are otherwise fully met.

(e) Except as provided in paragraph (d)(1) of this section, a trainset with one or more safety-critical items not in compliance with the railroad's approved inspection, testing, and maintenance program may be moved without passengers, within a yard, and at speeds not to exceed 10 mph, without meeting the requirements of paragraph (b) of this section where the movement is solely for the purpose of repair. A railroad shall ensure that the movement is made safely. If the railroad elects to repair the equipment in place, it shall, at a minimum, tag the equipment in accordance with paragraph (b)(3) of this section to make clear that the trainset is defective.

(f) Nothing in this section authorizes the movement of Tier III equipment subject to a Special Notice for Repair under part 216 of this chapter unless the movement is made in accordance with the restrictions contained in the Special Notice.

■ 43. Revise appendix C to part 238 to read as follows:

Appendix C to Part 238—Minimally Compliant Analytical Track (MCAT) Simulations Used for Qualifying Passenger Vehicles To Operate on Track Classes 2 Through 5 and up to 6 Inches of Cant Deficiency

(a) This appendix contains requirements for using computer simulations to comply with the vehicle/track system qualification testing requirements specified in § 238.139.

These simulations shall be performed using a track model containing defined geometry perturbations at the limits that are permitted for a specific class of track and level of cant deficiency. This track model is known as Minimally Compliant Analytical Track (MCAT). These simulations shall be used to identify vehicle dynamic performance issues prior to service or, as appropriate, a change in service, and demonstrate that a vehicle type is suitable for operation on the track over which it is intended to operate.

(b) As specified in § 238.139(c), MCAT shall be used for the qualification of new vehicle types intended to operate at track Classes 2 through 5 speeds, or at any curving speed producing no more than 6 inches of cant deficiency. In addition, as specified in § 238.139(d)(2), MCAT shall be used to qualify on new routes vehicle types that have previously been qualified, by testing only, on other routes.

(1) *Validation.* To validate the vehicle model used for simulations under this part, the track owner or railroad shall obtain vehicle simulation predictions using measured track geometry data, chosen from the same track section over which testing shall be performed as specified in § 238.139(c)(2)(ii). These predictions shall be submitted to FRA in support of the request for approval of the qualification testing plan. Full validation of the vehicle model used for simulations under this part shall be determined when the results of the simulations demonstrate that they replicate all key responses observed during qualification testing.

(2) *MCAT layout.* MCAT consists of nine segments, each designed to test a vehicle's performance in response to a specific type of track perturbation. The basic layout of MCAT is shown in figure 1 of this appendix, by type of track (curving or tangent), class of track, and cant deficiency (CD). The values for wavelength, λ, amplitude of perturbation, a, and segment length, d, are specified in this appendix. The bars at the top of figure 1 show which segments are required depending on the speed and degree of curvature.

(i) *MCAT segments.* MCAT's nine segments contain different types of track deviations in which the shape of each deviation is a versine having wavelength and amplitude varied for each simulation speed as further specified. The nine MCAT segments are defined as follows:

(A) *Hunting perturbation (a_1).* This segment contains an alinement deviation having a wavelength, λ, of 10 feet and amplitude of 0.25 inch on both rails to test vehicle stability on tangent track.

(B) *Gage narrowing (a_2).* This segment contains an alinement deviation on one rail to reduce the gage from the nominal value to the minimum permissible gage or maximum alinement (whichever comes first).

(C) *Gage widening (a_3).* This segment contains an alinement deviation on one rail to increase the gage from the nominal value to the maximum permissible gage or maximum alinement (whichever comes first).

(D) *Repeated surface (a_9).* This segment contains three consecutive profile variations on each rail.

(E) *Repeated alinement (a_4).* This segment contains two consecutive alinement variations on each rail.

(F) *Single surface (a_{10}, a_{11}).* This segment contains a maximum permissible profile variation on one rail. If the maximum permissible profile variation alone produces a condition which exceeds the maximum allowed warp condition, a second profile variation is also placed on the opposite rail to limit the warp to the maximum permissible value.

(G) *Single alinement (a_5, a_6).* This segment contains a maximum permissible alinement variation on one rail. If the maximum permissible alinement variation alone produces a condition which exceeds the maximum allowed gage condition, a second alinement variation is also placed on the opposite rail to limit the gage to the maximum permissible value.

(H) *Short warp (a_{12}).* This segment contains a pair of profile deviations to produce a maximum permissible 10-foot warp perturbation. The first is on the inner rail, and the second follows 10 feet farther on the outside rail. Each deviation has a wavelength, λ, of 20 feet and variable amplitude for each simulation speed as described below. This segment is to be used only on curved track simulations.

(I) *Combined perturbation (a_7, a_8, a_{13}).* This segment contains a down and out combined geometry condition on the outside rail in the body of the curve. If the variations produce a condition which exceeds the maximum allowed gage condition, a second variation is also placed on the opposite rail as for the MCAT segments described in paragraphs (b)(2)(i)(F) and (G) of this appendix. This segment is to be used for all curved track simulations at speeds producing no more than 6 inches of cant deficiency on track Classes 2 through 5.

(ii) *Segment lengths.* Each MCAT segment shall be long enough to allow the vehicle's response to the track deviation(s) to damp out. Each segment shall also have a minimum length as specified in table 1 of this appendix, which references the distances in figure 1 of this appendix. For curved track segments, the perturbations shall be placed far enough in the body of the curve to allow for any spiral effects to damp out.

(iii) *Degree of curvature.* (A) For each simulation involving assessment of curving performance, the degree of curvature, D, which generates a particular level of cant deficiency, E_u, for a given speed, V, shall be calculated using the following equation:

$$D = \frac{E_a + E_u}{0.0007 \times V^2}$$

Where

D = Degree of curvature (degrees).
V = Simulation speed (mph).
E_a = 3 inches for Class 2 and 6 inches for Classes 3 through 5.
E_u = Cant deficiency (inches).

(B) Table 2 of this appendix depicts the degree of curvature for use in MCAT simulations of passenger equipment performance on Class 2 through 5 track, based on the equation in paragraph (b)(2)(iii)(A) of this appendix.

(3) *Required simulations*—(i) *General.* To develop a comprehensive assessment of vehicle performance, simulations shall be performed for a variety of scenarios using MCAT. These simulations shall be performed on tangent or curved track, or both, depending on the level of cant deficiency and speed (track class) as summarized in table 3 of this appendix.

(A) All simulations shall be performed using the design wheel profile and a nominal track gage of 56.5 inches, using tables 4, 5, or 6 of this appendix, as appropriate. In addition, all simulations involving the assessment of curving performance shall be repeated using a nominal track gage of 57.0 inches, using tables 5 or 6 of this appendix, as appropriate.

(B) For tangent track segments, all simulations on the hunting perturbation shall be repeated using a high-conicity, wheel-rail profile combination approved by FRA that produces a minimum conicity of 0.4 for wheelset lateral shifts up to flange contact.

(C) All simulations shall be performed using a wheel/rail coefficient of friction of 0.5.

(ii) *Vehicle performance on tangent track Classes 2 through 5.* For maximum vehicle speeds corresponding to track Classes 2 through 5, the MCAT segments described in paragraphs (b)(2)(i)(A) through (G) of this appendix shall be used to assess vehicle performance on tangent track. A parametric matrix of MCAT simulations shall be performed using the following range of conditions:

(A) *Vehicle speed.* Simulations shall demonstrate that at up to 5 mph above the proposed maximum operating speed, the vehicle type shall not exceed the wheel/rail force and acceleration criteria defined in the Vehicle/Track Interaction Safety Limits table in § 213.333 of this chapter. Simulations shall also demonstrate acceptable vehicle dynamic response by incrementally increasing speed, as shown in table 2, up to 5 mph above the proposed maximum operating speed for each track class (in 5 mph increments).

(B) *Perturbation wavelength.* For each speed, a set of two separate MCAT simulations shall be performed. In each MCAT simulation for the perturbation segments described in paragraphs (b)(2)(i)(B) through (G) of this appendix, every perturbation shall have the same wavelength. The following two wavelengths, λ, shall be used: 31, and 62 feet. The hunting perturbation segment described in paragraph (b)(2)(i)(A) of this appendix has a fixed wavelength, λ, of 10 feet.

(C) *Amplitude parameters.* Table 4 of this appendix provides the amplitude values for the MCAT segments described in paragraphs (b)(2)(i)(A) through (G) of this appendix for each speed of the required parametric MCAT simulations. The last set of simulations shall

be performed at 5 mph above the proposed maximum operating speed, as shown in table 2, using the amplitude values in table 4 that correspond to the proposed maximum operating speed.

Figure 1 of Appendix C to Part 238 MCAT Simulations on Curved Track (Cant Deficiency ≤6 Inches) Track Layout

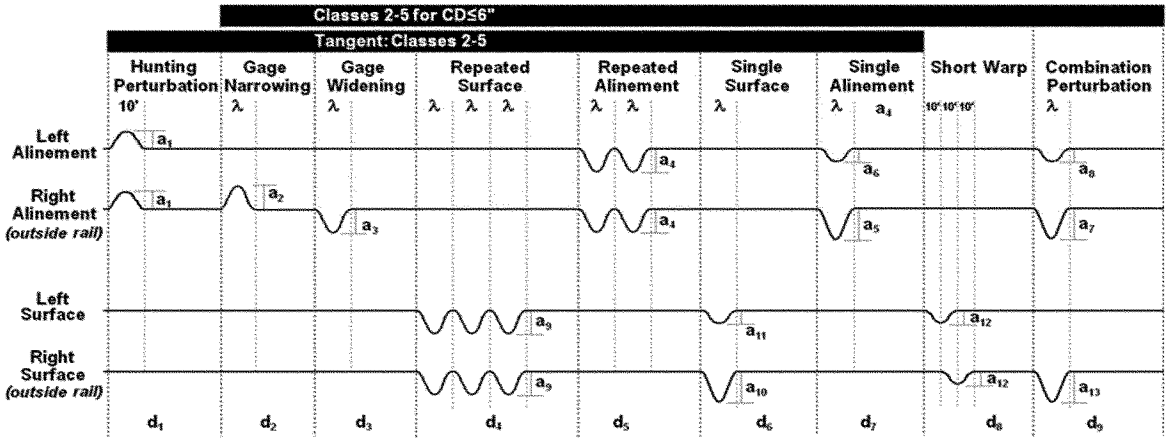

TABLE 1 OF APPENDIX C TO PART 238—MINIMUM LENGTHS OF MCAT SEGMENTS

Distances (ft)								
d_1	d_2	d_3	d_4	d_5	d_6	d_7	d_8	d_9
1,000			1,500	1,000				

TABLE 2 OF APPENDIX C TO PART 238—DEGREE OF CURVATURE FOR USE IN MCAT SIMULATIONS (TRACK CLASSES 2 THROUGH 5) CANT DEFICIENCY ≤6 INCHES

	Tangent	Cant deficiency			
		Class 2 Ea[1] = 3″, Class 3 through 5 Ea = 6″			
		3″	4″	5″	6″
Class 2:					
30 mph	0	9.52	.....	.....	.....
35 mph	0	9.52	.....	.....	.....
Class 3:					
35 mph	0	10.50	11.66	12.83	13.99
40 mph	0	8.04	8.93	9.82	10.71
45 mph	0	6.35	7.05	7.76	8.47
50 mph	0	5.14	5.71	6.29	6.86
55 mph	0	4.25	4.72	5.19	5.67
60 mph	0	3.57	3.97	4.37	4.76
65 mph	0	3.57	3.97	4.37	4.76
Class 4:					
65 mph	0	3.04	3.38	3.72	4.06
70 mph	0	2.62	2.92	3.21	3.50
75 mph	0	2.29	2.54	2.79	3.05
80 mph	0	2.01	2.23	2.46	2.68
85 mph	0	2.01	2.23	2.46	2.68
Class 5:					
85 mph	0	1.78	1.98	2.17	2.37
90 mph	0	1.59	1.76	1.94	2.12
95 mph	0	1.59	1.76	1.94	2.12

[1] "Ea" means actual elevation.

TABLE 3 OF APPENDIX C TO PART 238—SUMMARY OF REQUIRED VEHICLE PERFORMANCE ASSESSMENT USING SIMULATIONS

	New vehicle types
Curved Track: cant deficiency ≤6 inches	Curving performance simulation: required for track classes 2 through 5.
Tangent track	Tangent performance simulation: required for track classes 2 through 5.

Table 4 of Appendix C to Part 238—Track Class 2 Through 5 Amplitude Parameters (in Inches) for MCAT Simulations on Tangent Track

BILLING CODE 4910–06–P

		Gage 56.5"			
		Class 2	**Class 3**	**Class 4**	**Class 5**
Passenger	Max. Operating Speed (mph)	30	60	80	90
	Max. Simulation Speed (mph)	35	65	85	95

MCAT Segments	**Parameter**	**Segment Description**
Hunting	a_1	(b)(1)(i)
Gage Narrowing	a_2	(b)(1)(ii)
Gage Widening	a_3	(b)(1)(iii)
Repeated Surface	a_9	(b)(1)(ii)
Repeated Alinement	a_4	(b)(1)(iii)
Single Surface	a_{10}, a_{11}	(b)(1)(vi)
Single Alinement	a_5, a_6	(b)(1)(vii)
Short Warp	a_{12}	
Combined Perturbation	a_7, a_8, a_{13}	

		Amplitude Parameters (inches)			
Wavelength λ = 10ft	a_1	0.250	0.250	0.250	0.250
Wavelength λ = 20ft	a_{12}				
Wavelength λ = 31ft	a_2	0.500	0.500	0.500	0.500
	a_3	1.250	1.250	1.000	0.750[1]
	a_4	2.250[1,2]	1.313[1,2]	1.125[1,2]	0.563[1,2]
	a_5	3.000[1]	1.750[1]	1.500[1]	0.750[1]
	a_6	1.750	0.500	0.500	0.000
	a_7				
	a_8				
	a_9	2.063[1,2]	1.688[1,2]	1.500[1,2]	0.938[1,2]
	a_{10}	2.750[1]	2.250[1]	2.000[1]	1.250[1]
	a_{11}	0.750	0.500	0.750	0.250
	a_{13}				
Wavelength λ = 62ft	a_2	0.500	0.500	0.500	0.500
	a_3	1.250	1.250	1.000	0.750
	a_4	2.250[2]	1.313[2]	1.125[2]	0.563[2]
	a_5	3.000	1.750	1.500	0.750
	a_6	1.750	0.500	0.500	0.000
	a_7				
	a_8				
	a_9	2.063[2]	1.688[2]	1.500[2]	0.938[2]
	a_{10}	2.750	2.250	2.000	1.250
	a_{11}	0.750	0.500	0.750	0.250
	a_{13}				

1 – No 31ft limit; 62ft limit used
2 – 75% of single perturbation limits used

Table 5 of Appendix C to Part 238 Track Class 2 Through 5 Amplitude Parameters (in Inches) for MCAT Simulations on Curved Track With Cant Deficiency ≥3 and ≤5 Inches

		Gage 56.5"				Gage 57.0"			
		Class 2	Class 3	Class 4	Class 5	Class 2	Class 3	Class 4	Class 5
Passenger	Max. Operating Speed (mph)	30	60	80	90	30	60	80	90
	Max. Simulation Speed (mph)	35	65	85	95	35	65	85	95
MCAT Segments	**Parameter**	**Segment Description**				**Segment Description**			
Hunting	a_1								
Gage Narrowing	a_2	(b)(1)(ii)				(b)(1)(ii)			
Gage Widening	a_3	(b)(1)(iii)				(b)(1)(iii)			
Repeated Surface	a_9	(b)(1)(ii)				(b)(1)(ii)			
Repeated Alinement	a_4	(b)(1)(iii)				(b)(1)(iii)			
Single Surface	a_{10}, a_{11}	(b)(1)(vi)				(b)(1)(vi)			
Single Alinement	a_5, a_6	(b)(1)(vii)				(b)(1)(vii)			
Short Warp	a_{12}	(b)(1)(viii)				(b)(1)(viii)			
Combined Perturbation	a_7, a_8, a_{13}	(b)(1)(ix)				(b)(1)(ix)			
		Amplitude Parameters (inches)				**Amplitude Parameters (inches)**			
Wavelength λ = 10ft	a_1								
Wavelength λ = 20ft	a_{12}	1.125[2]	1.000[2]	0.875[2]	0.750[2]	1.125[2]	1.000[2]	0.875[2]	0.750[2]
Wavelength λ = 31ft	a_2	0.500	0.500	0.500	0.500	1.000	1.000	1.000	0.500
	a_3	1.250	1.250	1.000	0.500	0.750	0.750	0.500	0.500
	a_4	2.250[1,3]	0.938[3]	0.750[3]	0.375[3]	2.250[1,3]	0.938[3]	0.750[3]	0.375[3]
	a_5	3.000[1]	1.250	1.000	0.500	3.000[1]	1.250	1.000	0.500
	a_6	1.750	0.000	0.000	0.000	2.250	0.500	0.500	0.000
	a_7	2.250[1,3]	0.938[3]	0.750[3]	0.375[3]	2.250[1,3]	0.938[3]	0.750[3]	0.375[3]
	a_8	1.000	0.000	0.000	0.000	1.500	0.188	0.250	0.000
	a_9	2.063[1]	1.688[1]	1.500[1]	0.938[1]	2.063[1]	1.688[1]	1.500[1]	0.938[1]
	a_{10}	2.750[1]	2.250[1]	2.000[1]	1.250[1]	2.750[1]	2.250[1]	2.000[1]	1.250[1]
	a_{11}	0.500	0.250	0.250	0.000	0.500	0.250	0.250	0.000
	a_{13}	2.063[1,3]	1.688[1,3]	1.500[1,3]	0.938[1,3]	2.063[1,3]	1.688[1,3]	1.500[1,3]	0.938[1,3]
Wavelength λ = 62ft	a_2	0.500	0.500	0.500	0.500	1.000	1.000	1.000	0.625
	a_3	1.250	1.250	1.000	0.625	0.750	0.750	0.500	0.500
	a_4	2.250[3]	1.313[3]	1.125[3]	0.469[3]	2.250[3]	1.313[3]	1.125[3]	0.469[3]
	a_5	3.000	1.750	1.500	0.625	3.000	1.750	1.500	0.625
	a_6	1.750	0.500	0.500	0.000	2.250	1.000	1.000	0.125
	a_7	2.250[3]	1.313[3]	1.125[3]	0.469[3]	2.250[3]	1.313[3]	1.125[3]	0.469[3]
	a_8	1.000	0.063	0.125	0.000	1.500	0.563	0.625	0.000
	a_9	2.063	1.688	1.500	0.938	2.063	1.688	1.500	0.938
	a_{10}	2.750	2.250	2.000	1.250	2.750	2.250	2.000	1.250
	a_{11}	0.500	0.250	0.250	0.000	0.500	0.250	0.250	0.000
	a_{13}	2.063[3]	1.688[3]	1.500[3]	0.938[3]	2.063[3]	1.688[3]	1.500[3]	0.938[3]

1 – No 31ft limit; 62ft limit used
2 – 62ft cross-level limit
3 – 75% of single perturbation limits used

Table 6 of Appendix C to Part 238 Track Class 2 Through 5 Amplitude Parameters (in Inches) for MCAT Simulations on Curved Track With Cant Deficiency >5 Inches and ≤6 Inches)

		Gage 56.5"				Gage 57.0"			
		Class 2	Class 3	Class 4	Class 5	Class 2	Class 3	Class 4	Class 5
Passenger	Max. Operating Speed (mph)	30	60	80	90	30	60	80	90
	Max. Simulation Speed (mph)	35	65	85	95	35	65	85	95

MCAT Segments	Parameter	Segment Description				Segment Description			
Hunting	a_1								
Gage Narrowing	a_2	(b)(1)(ii)				(b)(1)(ii)			
Gage Widening	a_3	(b)(1)(iii)				(b)(1)(iii)			
Repeated Surface	a_9	(b)(1)(ii)				(b)(1)(ii)			
Repeated Alinement	a_4	(b)(1)(iii)				(b)(1)(iii)			
Single Surface	a_{10}, a_{11}	(b)(1)(vi)				(b)(1)(vi)			
Single Alinement	a_5, a_6	(b)(1)(vii)				(b)(1)(vii)			
Short Warp	a_{12}	(b)(1)(viii)				(b)(1)(viii)			
Combined Perturbation	a_7, a_8, a_{13}	(b)(1)(ix)				(b)(1)(ix)			
		Amplitude Parameters (inches)				Amplitude Parameters (inches)			
Wavelength λ = 10ft	a_1								
Wavelength λ = 20ft	a_{12}		0.875	0.875	0.750		0.875	0.875	0.750
Wavelength λ = 31ft	a_2		0.500	0.500	0.500		0.750	0.750	0.500
	a_3		0.750	0.750	0.500		0.750	0.500	0.500
	a_4		0.563[1]	0.563[1]	0.375[1]		0.563[1]	0.563[1]	0.375[1]
	a_5		0.750	0.750	0.500		0.750	0.750	0.500
	a_6		0.000	0.000	0.000		0.000	0.250	0.000
	a_7		0.500	0.500	0.333		0.500	0.500	0.333
	a_8		0.000	0.000	0.000		0.000	0.000	0.000
	a_9		0.750[1]	0.750[1]	0.750[1]		0.750[1]	0.750[1]	0.750[1]
	a_{10}		1.000	1.000	1.000		1.000	1.000	1.000
	a_{11}		0.000	0.000	0.000		0.000	0.000	0.000
	a_{13}		0.667	0.667	0.667		0.667	0.667	0.667
Wavelength λ = 62ft	a_2		0.500	0.500	0.500		1.000	0.875	0.625
	a_3		1.250	0.875	0.625		0.750	0.500	0.500
	a_4		0.938[1]	0.656[1]	0.469[1]		0.938[1]	0.656[1]	0.469[1]
	a_5		1.250	0.875	0.625		1.250	0.875	0.625
	a_6		0.000	0.000	0.000		0.500	0.375	0.125
	a_7		0.833	0.583	0.417		0.833	0.583	0.417
	a_8		0.000	0.000	0.000		0.083	0.083	0.000
	a_9		1.313[1]	0.938[1]	0.750[1]		1.313[1]	0.938[1]	0.750[1]
	a_{10}		1.750	1.250	1.000		1.750	1.250	1.000
	a_{11}		0.000	0.000	0.000		0.000	0.000	0.000
	a_{13}		1.167	0.833	0.667		1.167	0.833	0.667

1 – 75% of single perturbation limits used

BILLING CODE 4910–06–C

■ 44. Add Appendix I to part 238 to read as follows:

Appendix I to Part 238—Tier III Trainset Cab Noise Test Protocol

This appendix prescribes the procedures for the in-cab noise measurements for Tier III trainsets at speed. The purpose of the cab noise testing is to ensure that the noise levels within the cab of the trainset meet the minimum requirements defined within § 238.759(a)(1).

I. Measurement Instrumentation

The instrumentation used shall conform to the measurement instrumentation requirements prescribed in paragraph I of appendix H to part 229 of this chapter.

II. Test Site Requirements

The test site shall meet the following requirements:

(1) The passenger trainset shall be tested over a representative segment of the railroad and shall not be tested in any site specifically designed to artificially lower in-cab noise levels.

(2) All windows, doors, cabinets seals, etc., must be installed in the trainset cab and be closed.

(3) The heating, ventilation, and air conditioning (HVAC) system or a dedicated heating or air conditioner system must be operating on high, and the vents must be open and unobstructed.

III. Procedures for Measurement

(1) $L_{Aeq, T}$ is defined as the A-weighted, equivalent sound level for a duration of T seconds, and the sound level meter shall be set for A-weighting with slow response.

(2) The sound level meter shall be calibrated with the acoustic calibrator immediately before and after the in-cab tests. The calibration levels shall be recorded.

(3) Any change in the before and after calibration level(s) shall be less than 0.5 dB.

(4) The sound level meter shall be located:

(i) Laterally as close as practicable to the longitudinal centerline of the cab, adjacent to the engineer's seat;

(ii) Longitudinally at the center of the engineer's nominal seating position; and

(iii) At a height 1,219 mm (48 inches) above the floor.

(5) The sound measurements shall be taken autonomously within the cab.

(6) The sound level shall be recorded at the maximum approved train speed ± 3km/h (±1.86 mph).

(7) After the trainset speed has become constant at the maximum test speed and the in-cab noise is continuous, $L_{Aeq, T}$ shall be measured, either directly or using a 1-second sampling interval, for a minimum duration of 30 seconds at the measurement position ($L_{Aeq, 30s}$).

IV. Recordkeeping

To demonstrate compliance, the entity conducting the test shall maintain records of the following data. The records created under this procedure shall be retained and made readily accessible for review for a minimum of three years. All records may be maintained in either written or electronic form.

(1) Name(s) of persons conducting the test, and the date of the test.

(2) Description of the passenger trainset cab being tested, including: model number, serial number, and date of manufacture.

(3) Description of sound level meter and calibrator, including: make, model, type, serial number, and manufacturer's calibration date.

(4) The recorded measurement during calibration and for the microphone location during operating conditions.

(5) The recorded measurements taken during the test.

(6) Other information as appropriate to describe the testing conditions and procedure.

(7) Where a trainset fails a test and is re-tested under the provisions of section III(7) of this appendix, the suspected reason(s) for the failure.

■ 45. Add Appendix J to part 238 to read as follows:

Appendix J to Part 238—Alternative Requirements for Evaluating the Crashworthiness and Occupant Protection Performance of a Tier I Passenger Trainset Equipped With Crash Energy Management Features

General

As required by § 238.110(e)(1), this appendix applies to single pieces of passenger equipment that are fully compliant with existing Tier I structural requirements, provide additional CEM features, and are intended for interoperable use within conventional, Tier I-compliant trains. The requirements of this appendix do not apply to Tier I alternatively designed trainsets, or single pieces of equipment fully compliant with existing Tier I structural requirements outfitted with pushback couplers as the only CEM feature. Each new, fully Tier I-compliant single vehicle design equipped with additional CEM features shall be subject to the following collision scenarios to ensure appropriate performance of the crush zone and stable load transmission.

In-Line Collision Scenario Between Identical Trains

The new single car or locomotive design shall be placed into a reference train composed of vehicles of similar design, the details of which depend upon whether the single car is a locomotive, cab car, or an intermediate car. The vehicles shall be in-line without offset between adjacent cars. The reference train shall be subjected to a collision with an identical train on level, tangent track as described below. This symmetric scenario may be simulated by a collision of the reference train moving at one-half the collision speed into a rigid, stationary plane whose normal direction is parallel to the direction of travel (representing the plane of symmetry). Each car in both trains shall have a weight corresponding to AW0 and shall not have the brakes applied.

Non-Passenger Carrying Locomotives

For non-passenger carrying locomotives with CEM features, the reference train shall consist of five of the non-passenger carrying CEM locomotives. The closing speed for this collision scenario is that which is sufficient to exhaust the design energy-absorption capacity of the leading locomotive crush zone.

CEM-Equipped Cab Cars

For evaluation of the performance of a CEM-equipped cab car, the reference train shall consist of five such CEM-equipped cab cars. If the CEM-equipped cab cars are not all of symmetric design, each end of the trailing four cars shall have the same crush zone as that of the non-cab end of the non-symmetric cab car under evaluation. The closing speed for this collision scenario is that which results in dissipation of no less than 75 percent of the design energy-absorption capacity of at least one crush zone at the colliding interface.

CEM-Equipped Intermediate Cars

Evaluation of the performance of CEM-equipped intermediate cars shall be performed using a reference train consisting of four identical intermediate cars behind a leading vehicle with the following characteristics:

(a)(1) The leading vehicle shall be decelerated to zero by:

(i) A prescribed motion equivalent to a constant, longitudinal deceleration of 8g; or

(ii) An application of forces resulting in a deceleration of at least 8g.

(2) The point of application of the motion constraint or the measurement of the resulting speed shall be located in the rear half of the leading vehicle.

(b) The trailing end of the leading vehicle shall have the same crash characteristic as the adjacent end of the coach to be assessed (if the evaluation vehicle is of a symmetric design), or the same crash characteristic as the trailing end of the coach to be assessed (if the evaluation vehicle is of a non-symmetric design), where:

(1) The crush zone shall be represented with the same degree of detail as the coach to be assessed; and

(2) Any additional potential contact surfaces shall be represented, at a minimum, as rigid geometry.

(c) The forward structure of the leading vehicle may be modelled:

(1) Identically to the coach to be assessed;

(2) As a lumped mass model with a stiffness not less than the coach to be assessed; or

(3) As rigid.

(d) The criteria for preservation of survival space in § 238.705(b)(1)(i) and (ii) shall apply to the deformable portion of the lead vehicle, excluding its crush zone.

(e) The four remaining identical intermediate cars (including the intermediate car being assessed) shall follow the leading vehicle described, because CEM-equipped intermediate cars cannot be placed in the lead position in a train. The intermediate car to be assessed shall be placed immediately behind the leading vehicle; all other vehicles are not part of the assessment and may be simplified.

(f) The closing speed for this collision scenario is that which results in dissipation of no less than 75 percent of the design energy-absorption capacity of at least one crush zone at the colliding interface.

Offset Collision Scenario Between Identical Trains

An offset simulated collision between identical trains shall be run under the conditions defined in § 238.707(a) for locomotive- or cab car-led trains.

The performance of the evaluated single vehicle in the in-line and offset collision scenarios shall meet the deformation requirements in § 238.705(b)(1)(i) and (ii), and, if the single vehicle being evaluated is a cab car or locomotive, the requirements in § 238.705(b)(3)(i) through (iv).

■ 46. Add appendix K to part 238 to read as follows:

Appendix K to Part 238—Minimum Information for Test Procedures

The following is the minimum information necessary to be provided to FRA as part of pre-revenue service acceptance testing plan procedures under § 238.111(a)(3):

(a) A clear statement of the test objectives. One of the principal test objectives shall be to demonstrate that the equipment meets the safety requirements specified in this part when operated in the environment in which it is to be used.

(b) Dates, times, and locations of the pre-revenue service tests to permit FRA observation of such tests.

(c) Any special safety precautions to be observed during testing.

(d) A description of the railroad property or test facilities to be used to conduct the testing.

(e) Prerequisites for conducting each test.

(f) A detailed description of how the testing is to be conducted. This description shall include all the following:

(1) Identification of the equipment and on-board sub-systems to be tested.

(2) The method for testing.

(3) The instrumentation to be used.

(4) The means by which the test results will be recorded and reported.

(5) A description of the information or data to be obtained.

(6) A description of any criteria to be used as safety limits during the testing.

(7) The acceptance criteria to be used to evaluate the equipment and on-board sub-systems performance. If acceptance is to be based on extrapolation of less than full-level testing results, the analysis to be done to justify the validity of the extrapolation shall be described.

(g) Inspection, testing, and maintenance procedures to be followed to ensure testing is conducted safely.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2023–05576 Filed 3–31–23; 8:45 am]

BILLING CODE 4910–06–P

Reader Aids

Federal Register

Vol. 88, No. 63

Monday, April 3, 2023

CUSTOMER SERVICE AND INFORMATION

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List January 23, 2023

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/—layouts/PG/register.aspx*.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 2023

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
April 3	Apr 18	Apr 24	May 3	May 8	May 18	Jun 2	Jul 3
April 4	Apr 19	Apr 25	May 4	May 9	May 19	Jun 5	Jul 3
April 5	Apr 20	Apr 26	May 5	May 10	May 22	Jun 5	Jul 5
April 6	Apr 21	Apr 27	May 8	May 11	May 22	Jun 5	Jul 5
April 7	Apr 24	Apr 28	May 8	May 12	May 22	Jun 6	Jul 6
April 10	Apr 25	May 1	May 10	May 15	May 25	Jun 9	Jul 10
April 11	Apr 26	May 2	May 11	May 16	May 26	Jun 12	Jul 10
April 12	Apr 27	May 3	May 12	May 17	May 30	Jun 12	Jul 11
April 13	Apr 28	May 4	May 15	May 18	May 30	Jun 12	Jul 12
April 14	May 1	May 5	May 15	May 19	May 30	Jun 13	Jul 13
April 17	May 2	May 8	May 17	May 22	Jun 1	Jun 16	Jul 17
April 18	May 3	May 9	May 18	May 23	Jun 2	Jun 20	Jul 17
April 19	May 4	May 10	May 19	May 24	Jun 5	Jun 20	Jul 18
April 20	May 5	May 11	May 22	May 25	Jun 5	Jun 20	Jul 19
April 21	May 8	May 12	May 22	May 26	Jun 5	Jun 20	Jul 20
April 24	May 9	May 15	May 24	May 30	Jun 8	Jun 23	Jul 24
April 25	May 10	May 16	May 25	May 30	Jun 9	Jun 26	Jul 24
April 26	May 11	May 17	May 26	May 31	Jun 12	Jun 26	Jul 25
April 27	May 12	May 18	May 30	Jun 1	Jun 12	Jun 26	Jul 26
April 28	May 15	May 19	May 30	Jun 2	Jun 12	Jun 27	Jul 27